



## STATE OF COLORADO

Bill Owens, Governor  
Jane E. Norton, Executive Director

*Dedicated to protecting and improving the health and environment of the people of Colorado*

4300 Cherry Creek Dr. S.  
Denver, Colorado 80246-1530  
Phone (303) 692-2000  
TDD Line (303) 691-7700  
Located in Glendale, Colorado

Laboratory and Radiation Services Division  
8100 Lowry Blvd.  
Denver, Colorado 80230-6928  
(303) 692-3090

<http://www.cdphe.state.co.us>



Colorado Department  
of Public Health  
and Environment

MARCH 30, 2001

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE)  
WATER QUALITY CONTROL DIVISION (WQCD)

Public Notice of Completed Applications  
and Tentative Determination to Issue Waste Discharge Permits

**Purpose of Public Notice:** This notice states that complete applications for permits to discharge pollutants to waters have been made by the applicants named below. The CDPHE intends to issue, deny or inactivate Colorado Discharge Permit System permits for the facilities listed below, pursuant to the Clean Water Act, and the Colorado Water Quality Control Act. An asterisk by the permit name denotes a permit and rationale that serves as a total maximum daily load under Section 303 (d) of the Clean Water Act and will be submitted to the US EPA Region VIII for review. All permits are subject to the approval of the United States EPA.

The permit drafters may be reached by phone at (303) 692-3500.

1. OUTWEST SWINE, L.L.C., c/o Tim Fort, P.O. Box 2048, Omaha, NE 68103,  
PHONE NO.: (719)336-4163, PERMIT NO.: COH-006000, BACA AND  
PROWERS COUNTIES

**AMENDMENT:** for adding land application sites for applying swine feeding process wastewater from Nurseries A, B, and C, and for increasing the animal capacity at Nurseries A, B, and C

**DRAFTER:** Ron Jepson

**DISCHARGE:** land application, no discharge to receiving waters

NPDES PER ENF PRT SLG IU GEN  
DATE RCVD

MAR 30 2001

SECTION 1 2 3 4 5 6  
BY \_\_\_\_\_

2. **STORMWATER DISCHARGES ASSOCIATED WITH LIGHT INDUSTRIAL ACTIVITY**, c/o Kathy Dolan, Colorado Department of Public Health and Environment, Water Quality Control Division, WQCD-B2, 4300 Cherry Creek Drive South, Denver, CO 80246-1530, PHONE NO.: (303) 692-3500. PERMIT NO.: COR-010000, STATEWIDE

RENEWAL: second

DRAFTER: Kathy Dolan

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3. **MONTE VISTA, CITY OF**, c/o David Howard, City Manager, 4 Chico Camino, Monte Vista, CO 81144. PHONE: (719)852-2692, PERMIT NO.: CO-0023132, RIO GRANDE COUNTY

AMENDMENT: for discharge of treated domestic wastewater

DRAFTER: Jo Anne Gerken

DISCHARGE: is to the Rio Grande River

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4. **SUNNYSIDE GOLD CORPORATION - MINE REMEDIATION PROJECTS**, c/o Larry Perino, Reclamation Manager, Sunnyside Gold Corporation, P.O. Box 177, Silverton, CO 81433. PHONE: (970) 387-5533. PERMIT NO.: CO-0036056, SAN JUAN COUNTY

RENEWAL: for discharge from mine remediation projects

DRAFTER: Jon Kubic

DISCHARGE: is to various waters of the state

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5. **DOLORES, TOWN OF**, c/o Jim Cattles, Mayor, P.O. Box 630, Dolores, CO 81323. PHONE: (970) 882-7720. PERMIT NO.: CO-0040509, MONTEZUMA COUNTY

RENEWAL: treated domestic wastewater

DRAFTER: John Blair

DISCHARGE: Dolores River

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6. **SUNNYSIDE GOLD CORPORATION, AMERICAN TUNNEL**, c/o Larry Perino, Reclamation Manager, P.O. Box 177, Silverton, CO 81433. PHONE: (970) 387-5533. PERMIT NO.: CO-0027529, SAN JUAN COUNTY.

**RENEWAL:** for discharge of mine drainage from an inactive metals mine

**DRAFTER:** Jon Kubic

**DISCHARGE:** is to Eureka Creek

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7. **SUNNYSIDE GOLD CORPORATION - TERRY TUNNEL**, c/o Larry Perino, Reclamation Manager, Sunnyside Gold Corporation, P.O. Box 177, Silverton, CO 81433. PHONE: (970) 387-5533. PERMIT NO.: CO-0036056, SAN JUAN COUNTY

**RENEWAL:** for discharge of mine drainage from an inactive metals mine

**DRAFTER:** Jon Kubic

**DISCHARGE:** is to Cement Creek

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8. **LAS ANIMAS, CITY OF**, c/o William Howland, P.O. Box 468, Las Animas, CO 81054. PHONE: (719)456-2571. PERMIT NO.: CO-0043907, BENT COUNTY

**RENEWAL:** for the discharge of reverse osmosis concentrate from a water treatment plant

**DRAFTER:** Karen Young

**DISCHARGE:** to the Arkansas River

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9. **BERTHOUD, TOWN OF**, c/o Steve Pauken, P.O. Box 1229, Berthoud, CO 80513. PHONE: (970) 532-2643. PERMIT NO.: CO-0021083, LARIMER COUNTY

**RENEWAL:** for the discharge of treated domestic wastewater

**DRAFTER:** Karen Young

**DISCHARGE:** to No Name Creek

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10. **TWENTYMILE COAL COMPANY - FOIDEL CREEK MINE**, c/o Richard A. Mills, Manager-Surface/Environmental, Twentymile Coal Company, 29515 Routt Rd. #27, Oak Creek, CO 80467. PHONE: (970) 870-2712. PERMIT NO. CO-0042161, ROUTT COUNTY

**RENEWAL:** for discharge of mine drainage, spoils spring water, and treated domestic effluent

**DRAFTER:** Jon Kubic

**DISCHARGE:** is to Fish Creek

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11. **ACREW-BROOK FOREST INN**, c/o Susan Thayer Yates, 32163 Soda Creek Drive, Evergreen, CO 80439. PHONE: (303) 670-3855. PERMIT NO.: CO-0030261, JEFFERSON COUNTY

**RENEWAL:** for the discharge of treated domestic wastewater

**DRAFTER:** Christopher L. Gates

**DISCHARGE:** Cub Creek, segment 03 of the Bear Creek sub-basin, South Platte River

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**INTENDED CIVIL PENALTIES:**

**Purpose of Public Notice:** This notice states the intent of the("WQCD") to petition for the imposition of a negotiated civil penalty of \$3,000 against the Owners Association of Elk Meadows Estates, Inc. (Elk Meadows). This penalty is sought pursuant to the Water Quality Control Act, S 25-8-608, C.R.S., for violation of the conditions of CDPS Permit No. CO-0042568 as cited in a Compliance Order on Consent between Elk Meadows and the WQCD executed February 22, 2001. Elk Meadows is located in Ouray County and is authorized to discharge treated wastewater into ground water in the alluvium of Kelly Gulch

**Purpose of Public Notice:** This notice states the intent of the WQCD to petition for the imposition of a negotiated civil penalty of \$5,000 against the Town of Severance. This penalty is sought pursuant to the Water Quality Control Act, S 25-8-608, C.R.S., for violation of the conditions of CDPS Permit No. COG-581009 as alleged in the Notice of Violation and Cease and Desist Order issued by the WQCD on July 14, 1997. The Town of Severance located in Weld County, Colorado and is authorized to discharge treated wastewater into Law Ditch

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***Tentative Determination:*** State tentative determinations have been made in conjunction with the U.S. EPA that limitations and conditions imposed in these permits implement all applicable statutes and regulations and water quality standards.

**Public Meetings: Permit Action:** Pursuant to 25-8-502(3)(b), by **APRIL 30, 2001**, interested persons may submit a written request for a public meeting on the tentative determination. The Division, after considering all requests, may grant a public meeting for good cause shown. It will be held within sixty (60) days of the date of public notice.

**Public Comments: Permit Actions:** Pursuant to 25-8-502(3)(c) interested persons may submit written comments on the tentative determination provided they are received by the Division by **APRIL 30, 2001** received prior to said date will be considered in the formulation of final conditions and limitations. If a public meeting is held, the public comment period shall close sixty (60) days following the public notice.

Following the public comment period and the public meeting, if one is held, the Department will issue or deny the final permit. Interested parties then have thirty (30) days to request an adjudicatory hearing on the permit.

**Mailing Address:** Public comments should be directed to the CDPHE, WQCD-P-B2, 4300 Cherry Creek Drive South, Denver, Colorado 80246.

**Further Information: Permit Actions:** The draft permit is available for inspection at your County Commissioner's Office and County Health Department, or can be obtained by writing to the Division at the above address and paying a small charge per page for copying fees.

**Material Injury to Water Rights:** In accordance with C.R.S. 25-8-104 (2) (d) (1989), any person who believes that any actions proposed in this notice have the potential to cause material injury to a water right is advised to contact the Division, in writing by **APRIL 30, 2001**. The written notification should explain how the material injury will be incurred.

PUBLIC NOTICE NUMBER: C0-00-13

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Colorado Department  
of Public Health  
and Environment

## RATIONALE FOR PUBLIC NOTICE

MARCH 30, 2001

### SUNNYSIDE GOLD CORPORATION MINE REMEDIATION PROJECTS WITH NO RESIDUAL DISCHARGE FOLLOWING PROJECT COMPLETION

CDPS PERMIT NUMBER CO-0044768 SAN JUAN COUNTY

Enclosed is a copy of the draft permit renewal for your facility, which has been sent to public notice. There are thirty (30) days from the time of public notice to submit comments to the Division for consideration.

Because of the many changes that the permit may undergo before issuance, all changes and corrections will be made after the public notice period. If you have any questions, please do not hesitate to contact the Permits Unit at 692-3500.

Thank you for your cooperation.

Sincerely,  
*Susan Nachtrieb*

Susan Nachtrieb, Permits Unit Manager  
Water Quality Protection Section  
Water Quality Control Division

xc: County Commissioners  
County Health Departments

Enclosure

NPDES PER ENF PRT SLG IU GEN  
DATE RCVD

MAR 30 2001

SECTION 1 2 3 4 5 6  
BY \_\_\_\_\_ BY \_\_\_\_\_

**COLORADO DISCHARGE PERMIT SYSTEM (CDPS)**  
**SUMMARY OF RATIONALE**  
**SUNNYSIDE GOLD CORPORATION**  
**MINE REMEDIATION PROJECTS WITH**  
**NO RESIDUAL DISCHARGE FOLLOWING PROJECT COMPLETION**  
**CDPS PERMIT NUMBER CO-0044768, SAN JUAN COUNTY**

**I. TYPE OF PERMIT:** *Minor Industrial-First Renewal*

**II. ADMINISTRATIVE INFORMATION:**

**A. Facility Type:** *Mine Dewatering and Milling With No Discharge*  
**Fee Category:** *Category 03, Subcategory 4*  
**Category Flow Range:** *No Discharge (At Completion of Remedial Activity)*  
**Annual Fee:** *\$1,519*

**B. SIC Code:** *1041*

**C. Party Performing Remediation:** *Larry Perino, Reclamation Manager*  
*Sunnyside Gold Corporation*  
*P.O. Box 177*  
*Silverton, CO 81433*  
*(970) 387-5533 FAX: (970) 387-5310*

**D. Facilities Locations:**

*The mine sites that are being or will be remediated are located in the upper Animas River basin, and are associated with a consent agreement between the permittee and the Water Quality Control Division that is related to the plugging of the American Tunnel mine portal. The permittee has submitted Mine Remediation Plans (MRPs) for each site that has been identified to-date, with detailed location information. Any additional sites identified in the future will be described in similar MRPs that will be submitted to the Water Quality Control Division.*

**E. Discharge Point(s):**

*The receiving streams and specific locations associated with discharges from individual sites are described in the MRPs that have been, or will be, submitted for each waste site.*

**III. DISCHARGES AUTHORIZED BY THIS PERMIT:**

*The sites that have been and will be permitted are likely to discharge pollutants to waters of the State as a result of: 1) precipitation falling on top of and then running off the site, 2) surface drainage from other catchment areas flowing across the site, or, 3) short term releases of water held within the sites which may be released during site excavation. Such discharges are subject to regulation as "point sources" through the Colorado Discharge Permit System (CDPS), and are not allowable except as authorized through the issuance of a permit which contains terms and conditions that are developed in compliance with the Colorado Discharge Permit System Regulations (61.0).*

*Issued* \_\_\_\_\_ *Effective* \_\_\_\_\_ *Expires* \_\_\_\_\_

While the remediation actions will eventually eliminate direct exposure of mine waste to precipitation or surface drainage, and discharges of water stored within the waste will only be temporary and mitigated to the maximum extent practicable, it is necessary to provide permit coverage of all such discharges until the remediation actions have been completed.

It should be noted that one of the remediation actions that will be included in this permit, which involves the chemical adjustment of pooled mine water, does not involve mine waste. That project will accelerate filling of the mine pool and will force final pH equilibrium from a basic pH rather than an acidic pH.

During the implementation of these mine remediation projects, discharges from the American Tunnel or the Terry Tunnel will continue to be subject to CDPS permits No. CO-0027529 or CO-0036056, respectively.

Eight remediation projects (listed below) were covered under the previous permit. However, these projects have all been completed at the time of this permit renewal. In compliance with the Consent Decree between the Division and the permittee, the permittee has submitted certifications to the Division that all projects except the Sunnyside Mine Pool Mitigation project have been completed. The Colorado Division of Minerals and Geology has inspected the seven projects and reported their findings to the permittee and the Division. The reports indicate that each project has been completed according to the approved work plans. The Division has not approved or disapproved in writing of the projects, however it is apparent that these projects have been satisfactorily completed. Thus, the Division concurs that these projects should be dropped from the permit.

Completed Mine Remediation Projects
American Tunnel Mine Waste Dump
Boulder Creek Tailings Project
Surface Mill Tailings at Eureka
Gold Prince Mill Tailings
Longfellow Koehler Mine Waste Project
Pride of the West Tailings
Sunnyside Mine Pool Mitigation - Alkaline Solution Injection
Ransom Portal

The Sunnyside Mine Pool Mitigation project was completed in 1997. The mine pool briefly met the target pH in 1996, then dropped. In 1997, approximately three times the quantity of alkaline material proposed in the project was injected. Little resulting effect was observed. The permittee has not performed further work, however, even though they have satisfied the terms of the permit, they reserve the right to informally continue the project.

Two voluntary projects, the Columbus Mine Portals Mine Waste Dumps project and the London Mine Portals Waste Dumps project, were considered and eliminated due to complications due to ownership and access. Instead, the permittee has chosen three other projects and implemented them. The permittee retains the right to select and implement additional voluntary projects as they see the need. This is acceptable to the Division.

The permittee wishes to keep this permit in place to facilitate any future projects that may be required if monitoring at the instream reference point designated A-72 shows that further work is necessary. Such projects would be added to the permit via an amendment at an appropriate time. The permit is being renewed for this purpose.



#### **IV. TERMS AND CONDITIONS OF PERMIT**

##### **A. Mine Remediation Plan**

*Upon beginning remediation work at a site, the permittee is required to fully implement the Mine Remediation Plan (MRP) that has been submitted for that site.*

##### **B. Monitoring and Reporting**

*The permittee is required to perform whatever oversight is necessary to insure that the MRP is being implemented, and shall comply with all monitoring and reporting conditions included in the MRP. At a minimum, monthly reports are required for any water quality data that is collected as part of a MRP. In addition, quarterly reports must be submitted which include: 1) a narrative description of the current status of the remediation project, 2) a summary of analytical results for any sampling that was specified in the MRP for the site in question, 3) a photographic survey of the sites (both pre-remediation waste location and post-remediation waste location) involved in the remediation action. Reports must be received by the 28th day of the month following the calendar quarter or month for which the report is being submitted.*

##### **C. Legal Right To Enter**

*Prior to beginning on-site work for any remediation project, the permittee must submit documentation to the Water Quality Control Division showing that the permittee has been granted permission to enter the property(ies) where work will be carried out.*

##### **D. Termination**

*This mine remediation projects permit may be terminated in accordance with the terms of the Consent Decree when the remediation projects are completed.*

*Jon C. Kubic  
March 15, 2001*

#### **V. CHANGES MADE AFTER PUBLIC NOTICE**

Permit No.: CO-0044768

County: San Juan

**AUTHORIZATION TO DISCHARGE UNDER THE  
COLORADO DISCHARGE PERMIT SYSTEM**

In compliance with the provisions of the Colorado Water Quality Control Act, (25-8-101 et seq., CRS, 1973 as amended) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.; the "Act") the

**SUNNYSIDE GOLD CORPORATION**

is authorized, when certified by the Water Quality Control Division, to discharge from **Mine Remediation Projects With No Residual Discharge Following Project Completion** located within the **upper Animas River basin**, as listed in this permit, into various waters of the State, and in accordance with effluent limitations, monitoring requirements and other conditions set forth in Part I and II hereof. All discharges authorized herein shall be consistent with the terms and conditions of this permit.

The applicant may demand an adjudicatory hearing within thirty days of the issuance of the final permit determination, per the Colorado Discharge Permit System Regulations, 61.7 (1). Should the applicant choose to contest any of the effluent limitations, monitoring requirements or other conditions contained herein, the applicant must comply with Section 24-4-104 CRS and the Colorado Discharge Permit System Regulations. Failure to contest any such effluent limitation, monitoring requirement, or other condition, constitutes consent to the condition by the Applicant.

This permit and the authorization to discharge shall expire at midnight, **May 31, 2006**.

Issued and Signed this      day of

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

J. David Holm, Director  
Water Quality Control Division

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PART I

A. TERMS AND CONDITIONS

1. Authorization to Discharge

Beginning no later than the effective date of this general permit and lasting through **May 31, 2006**, the permittee is authorized to discharge from mine waste remediation projects with no residual discharge following project completion. The specific locations and outfalls associated with these projects shall be described in attachments to this permit, as incorporated via permit amendments. No specific projects are described at the time of this permit renewal.

2. Mine Remediation Plan (MRP) - Definition, Development

A Mine Remediation Plan (MRP) will be developed for each of the sites covered under this permit. The MRP shall be prepared in accordance with good engineering practices. (The plan need not be completed by a registered engineer.) The plan shall identify potential sources of pollution (including sediment) which may reasonably be expected to affect the quality of discharges associated with the mining operation. In addition, the plan shall describe and ensure the implementation of best management practices (BMPs) which will be used to reduce the pollutants in discharges associated with the inactive mining operation.

The MRPs shall include the following items, at a minimum:

a. Description of Mining Activities

To the extent that the permittee is knowledgeable, the plan shall provide a narrative description of the mining and associated activities that took place at the site. The narrative description shall report the approximate dates of operation, the total acreage within the mine site and an estimate of the number of acres of disturbed area. A general description of the location of the mining site relative to major transportation routes and communities shall also be provided.

b. Site Map

Each plan shall provide a generalized site map or maps indicating all of the following, where applicable:

- mining/milling site boundaries and access and haul roads;
- areas used for storage of overburden, materials, soils, tailings or wastes;
- areas used for outdoor manufacturing, storage or disposal of materials;
- tailings piles and ponds;
- an estimate of the direction(s) of flow;
- existing structural control measures to reduce pollutants in stormwater runoff; and
- springs, streams, wetlands and other surface waters.

c. Stormwater Management Controls - Identification of Sources and Best Management Practices During Progress of Remedial Action

The MRP shall identify potential sources of pollutants at the site and assess the potential of these sources to contribute pollutants to stormwater discharges during the progress of the remedial action. The MRP must also describe appropriate Best Management Practices (BMPs) to reduce the potential of these sources to contribute pollutants to stormwater discharges. The appropriateness and priorities of controls in the plan shall reflect identified potential sources of pollutants at the mining site. The description of the BMPs shall include:

A. TERMS AND CONDITIONS

2. Mine Remediation Plan (MRP) - Definition, Development (continued)

- i. **Stormwater diversion:** Describe how and where stormwater will be diverted away from potential pollutant sources to prevent stormwater contamination.
- ii. **Sediment and erosion prevention:** Describe practices that will be used to reduce erosion and prevent sediment delivery to State waters. These could include structural (such as silt fences, sediment ponds, drop structures, check dams) and non-structural (such as mulching and revegetation) methods.

d. Comprehensive Inspection and Record Keeping Procedures

The MRP shall identify qualified personnel that shall inspect designated areas. The Division will at any time have the right to inspect a remediation site after remediation work has begun, or the property owner has granted permission to the Division to enter the property. Upon request by the permittee, the Division will request that the State Division of Minerals and Geology (DMG) inspect any of the mitigation projects to determine whether the reclamation work has been completed in accordance with the reclamation standards of DMG and the MRPs.

e. Additional MRP Items

- i. **Legal Right to Enter Property:** Prior to beginning on-site work for any remediation project, the permittee must submit documentation to the Water Quality Control Division showing that the permittee has been granted permission to enter the property(ies) where work will be carried out. If possible, such documentation should be included in the MRP for a site.
- ii. **Photographs:** The plan should include photographs documenting the condition of the inactive mine site before any remedial action has occurred. If not included in the plan, such photographs must be submitted as part of the first regular monitoring report submitted for a site.
- iii. **Description of Remedial Action:** The plan shall describe the remedial action that will take place to minimize or eliminate the water quality impacts from the mine waste. The description shall include:
  - Remediation Goal Statement;
  - the characteristics of the mineralogic content of the mine-waste, and volume of the waste;
  - description of any materials that will be mixed into the mine waste on site; and
  - estimated volume and surface area of the final site, and estimated angle of side slopes.
- iv. **Discharges Other Than Stormwater:** For discharges other than stormwater, such as water ponded on a mine site or encountered within mine waste, such discharges must be treated or controlled such that the loading to the receiving stream is no greater than that which was occurring prior to commencement of the remedial action.
- v. **Description of permanent BMPs, final site stabilization, and potential land use:** The plan shall include a description of the specific measures that will be installed or used at the mine-waste site. The description shall include any of the following if appropriate: specifications for capping or isolation of the mine-waste, method and type of revegetation, and other permanent BMPs. The plan shall also include a description of the potential land use after remediation is complete.

**A. TERMS AND CONDITIONS**

**2. Mine Remediation Plan (MRP) - Definition, Development (continued)**

**f. Consistency with Other Plans**

MRPs may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the CWA, or Best Management Practices (BMPs) Programs otherwise required by a CDPS permit, and may incorporate any part of such plans into the MRP by reference. The MRP may rely upon information contained in approved plans submitted for other similar pollution control programs, including the Voluntary Clean Up Program. (Voluntary Cleanup and Redevelopment Act, CRS 25-16-303).

**3. Implementation of Mine Remediation Plan**

Upon beginning remediation work at a site The permittee is required to fully implement the Mine Remediation Plan (MRP) for each project that is described in the attachments to this permit.

**4. Oil and Grease, and Floating Solids Monitoring and Control**

In the event an oil sheen or floating oil, or floating solids, are observed in any discharge from a mine waste remediation site, all practicable measures must be taken in order to identify and eliminate the source of the sheen or floating solids.

**5. Monitoring and Reporting**

The permittee is required to perform whatever oversight is necessary to insure that the MRP is being implemented, and shall comply with all monitoring and reporting conditions included in the MRP. At a minimum, monthly reports are required for any water quality data that is collected as part of a MRP. In addition, quarterly reports must be submitted which include: 1) a narrative description of the current status of the remediation project, 2) a summary of analytical results for any sampling that was specified in the MRP for the site in question, 3) a photographic survey of the sites (both pre-remediation waste location and post-remediation waste location) involved in the remediation action. Reports must be received by the 28th day of the month following the calendar quarter or month for which the report is being submitted

**B. SPECIAL REQUIREMENTS**

**1. Materials Containment**

Any hazardous materials or chemicals permanently stored or used on site (including fuels, lubricants, hazardous soil amendment materials and hazardous fertilizers) shall be adequately handled and contained to prevent any spills from occurring. Earthen dikes or concrete basins with capacity to hold contents of storage tanks or containers shall be used to prevent spills of these materials into State Waters in the event of failure of the storage containers.

**C. GENERAL MONITORING, SAMPLING AND REPORTING REQUIREMENTS****1. Routine Reporting**

Reports submitted in compliance with the terms and conditions of this permit shall be submitted on a quarterly basis, except for water quality data, which shall be submitted on a monthly basis, and shall be mailed to the Division so they are received no later than the 28th day of the month following the end of each calendar quarter, or, for monthly reports, the no later than the 28th day of the month following the month for which the report is being submitted.

The original signed copy of each report shall be submitted to the Division at the following address:

Colorado Department of Public Health and Environment  
WQCD-P-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

**2. Representative Sampling**

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and approval by the Division.

If the permittee monitors at the point of discharge any pollutant limited by the permit more frequently than required by the permit, using approved test procedures or as specified in the permit, the result of this monitoring shall be included in the calculation and reporting of data to the Division.

**3. Analytical and Sampling Methods for Monitoring**

The permittee shall install, calibrate, use and maintain monitoring methods and equipment, including biological and indicated pollutant monitoring methods. All sampling shall be performed by the permittee according to specified methods in 40 C.F.R. Part 136; methods approved by EPA pursuant to 40 C.F.R. Part 136; or methods approved by the Division, in the absence of a method specified in or approved pursuant to 40 C.F.R. part 136. **The analytical method selected for a parameter shall be the one that can measure the lowest detected limit for that parameter unless the permit limitation or stream standard for those parameters not limited, is within the testing range of another approved method.** When requested in writing, the Division may approve an alternative analytical procedure or any significant modification to an approved procedure.

When the most sensitive analytical method which complies with this part, has a detection limit greater than or equal to the permit limit, the permittee shall report "less than (the detectable limit)," as appropriate. Such reports shall not be considered as violations of the permit limit.

**C. GENERAL MONITORING, SAMPLING AND REPORTING REQUIREMENTS****3. Analytical and Sampling Methods for Monitoring (continued)**

The present lowest method detection limits for specific parameters (which have limitations which are, in some cases, less than or equal to the detection limit) are as follows:

Arsenic	0.01 mg/l
Benzene	0.001 mg/l
Total Residual Chlorine	0.05 mg/l
Cadmium	0.001 mg/l
Chromium	0.01 mg/l
Chromium, Hexavalent	0.01 mg/l
Copper	0.005 mg/l
Lead	0.005 mg/l
Total Mercury	0.00025 mg/l
Nickel	0.05 mg/l
Selenium	0.01 mg/l
Silver	0.0002 mg/l
Zinc	0.01 mg/l

These limits apply to the total recoverable or the potentially dissolved fraction of metals.

For hexavalent chromium, samples must be unacidified so that dissolved concentrations will be measured rather than potentially dissolved concentrations.

**4. Records**

The permittee shall establish and maintain records. Those records shall include the following:

- a. The date, type, exact location, and time of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) the analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used;
- f. The results of such analyses; and
- g. Any other observations which may result in an impact on the quality or quantity of the discharge as indicated in 40 CFR 122.44 (I)(1)(iii).

The permittee shall retain for a minimum of three (3) years records of all monitoring information, including all original strip chart recordings for continuous monitoring instrumentation, all calibration and maintenance records, copies of all reports required by this permit and records of all data used to complete the application for this permit. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Division or EPA.



**C. GENERAL MONITORING, SAMPLING AND REPORTING REQUIREMENTS****5. Flow Measuring Device**

If not already a part of the permitted facility, within ninety (90) days after the effective date of the permit, a flow measuring device shall be installed to give representative values of effluent quantities at the respective discharge points. Unless specifically exempted, or modified in Part I.E.5 of this permit, a flow measuring device will be applicable at all designated discharge points.

At the request of the Division, the permittee shall show proof of the accuracy of any flow-measuring device used in obtaining data submitted in the monitoring report. The flow-measuring device must indicate values within ten (10) percent of the actual flow being discharged from the facility.

**6. Signatory and Certification Requirements**

- (a) All reports and other information required by the Division, shall be signed and certified for accuracy by the permittee in accord with the following criteria:
  - (i) In the case of corporations, by a principal executive officer of at least the level of vice-president or his or her duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the form originates;
  - (ii) In the case of a partnership, by a general partner;
  - (iii) In the case of a sole proprietorship, by the proprietor;
  - (iv) In the case of a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.
- (b) All reports required by permits, and other information requested by the Division shall be signed by a person as described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  - (i) The authorization is made in writing by a person described above;
  - (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and,
  - (iii) The written authorization is submitted to the Division.

If an authorization as described in this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this section must be submitted to the Division prior to or together with any reports, information, or applications to be signed by an authorized representative.

C. GENERAL MONITORING, SAMPLING AND REPORTING REQUIREMENTS

6. Signatory and Certification Requirements (continued)

The permittee, or the duly authorized representative shall make and sign the following certification on all such documents:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

PART II

A. NOTIFICATION REQUIREMENTS

1. Notification to Parties

All notification requirements under this section shall be directed as follows:

- a. Oral Notifications, other than for spills, during normal business hours shall be to:

Water Quality Protection Section  
Water Quality Control Division  
Telephone No.: (303) 692-3500

Spills notifications at any time and other notifications after hours shall be to :

Emergency Response Unit  
Office of the Environment  
Telephone No.: (877) 518-5608

- b. Written notification shall be to:

Water Quality Protection Section  
Water Quality Control Division  
Colorado Department of Public Health and Environment  
WQCD-WQP-B2  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

2. Change in Discharge

The permittee shall notify the Division, in writing, of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The alteration or addition could significantly change the nature or increase the quantity or pollutants discharged; or
- b. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported pursuant to an approved land application plan.

The permittee shall give advance notice to the Division of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

Whenever notification of any planned physical alterations or additions to the permitted facility is required pursuant to this section,, the permittee shall furnish the Division such plans and specifications which the Division deems reasonably necessary to evaluate the effect on the discharge, the stream, or ground water. If the Division finds that such new or altered discharge might be inconsistent with the conditions of the permit, the Division shall require a new or revised permit application and shall follow the procedures specified in Sections 61.5 through 61.6, and 61.15 of the Colorado Discharge Permit System Regulations.

3. Special Notifications - Definitions

- a. Bypass: The intentional diversion of waste streams from any portion of a treatment facility.
- b. Severe Property Damage: Substantial physical damage to property at the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. It does not mean economic loss caused by delays in production.
- c. Spill: An incident in which flows or solid materials are accidentally or unintentionally allowed to flow or escape so as to be lost from the treatment, processing or manufacturing system which may cause or threaten pollution of state waters.
- d. Upset: An exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

**PART II**

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Permit No. CO-0044768

**A. NOTIFICATION REQUIREMENTS**

**4. Noncompliance Notification**

- a. If, for any reason, the permittee does not comply with or will be unable to comply with any discharge limitations or standards specified in this permit, the permittee shall, at a minimum, provide the Division and EPA with the following information:
  - i. A description of the discharge and cause of noncompliance;
  - ii. The period of noncompliance, including exact dates and times and/or the anticipated time when the discharge will return to compliance; and
  - iii. Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.
- b. The permittee shall report the following circumstances orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances, and shall mail to the Division a written report containing the information requested in Part II.A.4 (a) within five (5) days after becoming aware of the following circumstances:
  - i. Circumstances leading to any noncompliance which may endanger health or the environment regardless of the cause of the incident;
  - ii. Circumstances leading to any unanticipated bypass which exceeds any effluent limitations in the permit;
  - iii. Circumstances leading to any upset or spill which causes an exceedance of any effluent limitation in the permit;
  - iv. Daily maximum violations for any of the pollutants limited by PART I.A of this permit and specified as requiring 24 hour notification. This includes any toxic pollutant or hazardous substance or any pollutant specifically identified as the method to control any toxic pollutant or hazardous substance.
- c. The permittee shall report instances of non-compliance which are not required to be reported within 24-hours at the time Discharge Monitoring Reports are submitted. The reports shall contain the information listed in sub-paragraph (a) of this section.

**5. Other Notification Requirements**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule in the permit shall be submitted no later than fourteen (14) days following each scheduled date, unless otherwise provided by the Division.

The permittee shall notify the Division, in writing, thirty (30) days in advance of a proposed transfer of permit as provided in Part II.B.4.

The permittee's notification of all anticipated noncompliance does not stay any permit condition.

All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Division as soon as they know or have reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - i. One hundred micrograms per liter (100 ug/l);
  - ii. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
  - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 61.4(2)(g).
  - iv. The level established by the Division in accordance with 40 C.F.R. § 122.44(f).
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - i. Five hundred micrograms per liter (500 ug/l);
  - ii. One milligram per liter (1 mg/l) for antimony; and

**A. NOTIFICATION REQUIREMENTS**

**5. Other Notification Requirements (continued)**

- iii. Ten times the maximum concentration value reported for that pollutant in the permit application..
- iv. The level established by the Division in accordance with 40 C.F.R. § 122.44(f).

**6. Bypass Notification**

If the permittee knows in advance of the need for a bypass, a notice shall be submitted, at least ten days before the date of the bypass, to the Division. The bypass shall be subject to Division approval and limitations imposed by the Division. Violations of requirements imposed by the Division will constitute a violation of this permit.

**7. Upsets**

**a. Effect of an Upset.**

An upset constitutes an affirmative defense to an action brought for noncompliance with permit effluent limitations if the requirements of paragraph (b) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance; is final administrative action subject to judicial review.

**b. Conditions Necessary for a Demonstration of Upset**

A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed contemporaneous operating logs, or other relevant evidence that:

- i. An upset occurred and that the permittee can identify the specific cause(s) of the upset; and
- ii. The permitted facility was at the time being properly operated and maintained; and
- iii. The permittee submitted proper notice of the upset as required in Part II.A.3. of this permit (24-hour notice); and
- iv. The permittee complied with any remedial measure necessary to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

In addition to the demonstration required above, a permittee who wishes to establish the affirmative defense of upset for a violation of effluent limitations based upon water quality standards shall also demonstrate through monitoring, modeling or other methods that the relevant standards were achieved in the receiving water.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed contemporaneous operating logs, or other relevant evidence that:

- i. An upset occurred and that the permittee can identify the specific cause(s) of the upset; and
- ii. The permitted facility was at the time being properly operated and maintained; and
- iii. The permittee submitted proper notice of the upset as required in Part II.A.4. of this permit (24-hour notice); and
- iv. The permittee complied with any remedial measure necessary to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

In addition to the demonstration required above, a permittee who wishes to establish the affirmative defense of upset for a violation of effluent limitations based upon water quality standards shall also demonstrate through monitoring, modeling or other methods that the relevant standards were achieved in the receiving water.

**c. Burden of Proof**

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

**8. Discharge Point**

Any discharge to the waters of the State from a point source other than specifically authorized by this permit is prohibited.

**A. NOTIFICATION REQUIREMENTS**

**9. Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee as necessary to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when necessary to achieve compliance with the conditions of the permit.

**10. Minimization of Adverse Impact**

The permittee shall take all reasonable steps to minimize or prevent any discharge of sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. As necessary, accelerated or additional monitoring to determine the nature and impact of the noncomplying discharge is required.

**11. Removed Substances**

Solids, sludges, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed in accordance with applicable state and federal regulations.

For all domestic wastewater treatment works, at industrial facilities, the permittee shall dispose of sludge in accordance with all State and Federal regulations.

**12. Submission of Incorrect or Incomplete Information**

Where the permittee failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or report to the Division, the permittee shall promptly submit the relevant information which was not submitted or any additional information needed to correct any erroneous information previously submitted

**13. Bypass**

- a. Bypasses are prohibited and the Division may take enforcement action against the permittee for bypass, unless:
  - i. The bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;
  - ii. There were no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - iii. Proper notices were submitted in compliance with Part II.A.4.
- b. "Severe property damage" as used in this Subsection means substantial physical damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- c. The permittee may allow a bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance or to assure optimal operation. These bypasses are not subject to the provisions of paragraph a. above.
- d. The Division may approve an anticipated bypass, after considering adverse effects, if the Division determines that the bypass will meet the conditions specified in paragraph a. above.

**14. Reduction, Loss, or Failure of Treatment Facility**

The permittee has the duty to halt or reduce any activity if necessary to maintain compliance with the effluent limitations of the permit. Upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production, control sources of wastewater, or all discharges, until the facility is restored or an alternative method of treatment is provided. This provision also applies to power failures, unless an alternative power source sufficient to operate the wastewater control facilities is provided.

It shall not be a defense for a permittee in an enforcement action that it would be necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

## B. RESPONSIBILITIES

### 1. Inspections and Right to Entry

The permittee shall allow the Division and/or the authorized representative, upon the presentation of credentials:

- a. To enter upon the permittee's premises where a regulated facility or activity is located or in which any records are required to be kept under the terms and conditions of this permit;
- b. At reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit and to inspect any monitoring equipment or monitoring method required in the permit; and
- c. To enter upon the permittee's premises in a reasonable manner and at a reasonable time to inspect and/or investigate, any actual, suspected, or potential source of water pollution, or to ascertain compliance or non compliance with the Colorado Water Quality Control Act or any other applicable state or federal statute or regulation or any order promulgated by the Division. The investigation may include, but is not limited to, the following: sampling of any discharge and/or process waters, the taking of photographs, interviewing of any person having knowledge related to the discharge permit or alleged violation, access to any and all facilities or areas within the permittee's premises that may have any affect on the discharge, permit, or alleged violation. Such entry is also authorized for the purpose of inspecting and copying records required to be kept concerning any effluent source.
- d. The permittee shall provide access to the Division to sample the discharge at a point after the final treatment process but prior to the discharge mixing with state waters upon presentation of proper credentials.

In the making of such inspections, investigations, and determinations, the Division, insofar as practicable, may designate as its authorized representatives any qualified personnel of the Department of Agriculture. The Division may also request assistance from any other state or local agency or institution.

### 2. Duty to Provide Information

The permittee shall furnish to the Division, within a reasonable time, any information which the Division may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Division, upon request, copies of records required to be kept by this permit.

### 3. Transfer of Ownership or Control

- a. Except as provided in paragraph b. of this section, a permit may be transferred by a permittee only if the permit has been modified or revoked and reissued as provided in Section 61.8(8) of the Colorado Discharge Permit System Regulations, to identify the new permittee and to incorporate such other requirements as may be necessary under the Federal Act.
- b. A permit may be automatically transferred to a new permittee if:
  - i. The current permittee notifies the Division in writing 30 days in advance of the proposed transfer date; and
  - ii. The notice includes a written agreement between the existing and new permittee(s) containing a specific date for transfer of permit responsibility, coverage and liability between them; and
  - iii. The Division does not notify the existing permittee and the proposed new permittee of its intent to modify, or revoke and reissue the permit.
  - iv. Fee requirements of the Colorado Discharge Permit System Regulations, Section 61.15 have been met.

### 4. Availability of Reports

Except for data determined to be confidential under Section 308 of the Federal Clean Water Act and Colorado Discharge Permit System Regulations 5 CCR 1002-61, Section 61.5.(4), all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Division and the Environmental Protection Agency.

The name and address of the permit applicant(s) and permittee(s), permit applications, permits and effluent data shall not be considered confidential. Knowingly making false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the Federal Clean Water Act, and Section 25-8-610 C.R.S.

### 5. Modification, Suspension, Revocation, or Termination of Permits By the Division

The filing of a request by the permittee for a permit modification, revocation and reissuance/termination or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

- a. A permit may be modified, suspended, or terminated in whole or in part during its term for reasons determined by the Division including, but not limited to, the following:

**B. RESPONSIBILITIES****5. Modification, Suspension, Revocation, or Termination of Permits By the Division**

- i. Violation of any terms or conditions of the permit;
  - ii. Obtaining a permit by misrepresentation or failing to disclose any fact which is material to the granting or denial of a permit or to the establishment of terms or conditions of the permit; or
  - iii. Materially false or inaccurate statements or information in the permit application or the permit.
  - iv. A determination that the permitted activity endangers human health or the classified or existing uses of state waters and can only be regulated to acceptable levels by permit modifications or termination.
- b. A permit may be modified in whole or in part for the following causes, provided that such modification complies with the provisions of Section 61.10 of the Colorado Discharge Permit System Regulations:
- i. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
  - ii. The Division has received new information which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of different permit conditions at the time of issuance. For permits issued to new sources or new dischargers, this cause includes information derived from effluent testing required under Section 61.4(7)(e) of the Colorado Discharge Permit System Regulations. This provision allows a modification of the permit to include conditions that are less stringent than the existing permit only to the extent allowed under Section 61.10 of the Colorado Discharge Permit System Regulations.
  - iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:
    - (A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved water quality standard, or an effluent limitation set forth in 5 CCR 1002-62, § 62 et seq.; and
    - (B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a Commission action with respect to the water quality standard or effluent limitation on which the permit condition was based; and
    - (C) The permittee requests modification after the notice of final action by which the EPA effluent limitation guideline, water quality standard, or effluent limitation is revised, withdrawn, or modified; or
    - (D) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this Regulation, within ninety (90) days of judicial remand.
  - iv. The Division determines that good cause exists to modify a permit condition because of events over which the permittee has no control and for which there is no reasonable available remedy.
  - v. The permittee has received a variance.
  - vi. When required to incorporate applicable toxic effluent limitation or standards adopted pursuant to § 307(a) of the Federal act.
  - vii. When required by the reopener conditions in the permit.
  - viii. As necessary under 40 C.F.R. 403.8(e), to include a compliance schedule for the development of a pretreatment program.
  - ix. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under Section 61.8(2) of the Colorado Discharge Permit System Regulations.
  - x. To establish a pollutant notification level required in Section 61.8(5) of the Colorado Discharge Permit System Regulations.
  - xi. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions, to the extent allowed in Section 61.10 of the Colorado Discharge Permit System Regulations.
  - xii. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.
  - xiii. For any other cause provided in Section 61.10 of the Colorado Discharge Permit System Regulations.
- c. At the request of a permittee, the Division may modify or terminate a permit and issue a new permit if the following conditions are met:
- i. The Regional Administrator has been notified of the proposed modification or termination and does not object in writing within thirty days of receipt of notification,
  - ii. The Division finds that the permittee has shown reasonable grounds consistent with the Federal and State statutes and regulations for such modifications or termination;
  - iii. Requirements of Section 61.15 of the Colorado Discharge Permit System Regulations have been met, and
  - iv. Requirements of public notice have been met.



**B. RESPONSIBILITIES**

**5. Modification, Suspension, Revocation, or Termination of Permits By the Division (continued)**

- d. Permit modification (except for minor modifications), termination or revocation and reissuance actions shall be subject to the requirements of Sections 61.5(2), 61.5(3), 61.6, 61.7 and 61.15 of the Colorado Discharge Permit System Regulations. The Division shall act on a permit modification request, other than minor modifications requests, within 180 days of receipt thereof. Except for minor modifications, the terms of the existing permit govern and are enforceable until the newly issued permit is formally modified or revoked and reissued following public notice.
- e. Upon consent by the permittee, the Division may make minor permit modifications without following the requirements of Sections 61.5(2), 61.5(3), 61.7 and 61.15 of the Colorado Discharge Permit System Regulations. Minor modifications to permits are limited to:
  - i. Correcting typographical errors; or
  - ii. Increasing the frequency of monitoring or reporting by the permittee; or
  - iii. Changing an interim date in a schedule of compliance, provided the new date of compliance is not more than 120 days after the date specific in the existing permit and does not interfere with attainment of the final compliance date requirement; or
  - iv. Allowing for a transfer in ownership or operational control of a facility where the Division determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittees has been submitted to the Division; or
  - v. Changing the construction schedule for a discharger which is a new source, but no such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge; or
  - vi. Deleting a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.
- f. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.
- g. The filing of a request by the permittee for a permit modification, revocation and reissuance or termination does not stay any permit condition.
- h. All permit modifications and reissuances are subject to the antibacksliding provisions set forth in 61.10 (e) through (g).

**6. Oil and Hazardous Substance Liability**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under Section 311 (Oil and Hazardous Substance Liability) of the Clean Water Act.

**7. State Laws**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority granted by Section 510 of the Clean Water Act.

**8. Permit Violations**

Failure to comply with any terms and/or conditions of this permit shall be a violation of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit.

**9. Property Rights**

The issuance of this permit does not convey any property or water rights in either real or personal property, or stream flows, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

**10. Severability**

The provisions of this permit are severable. If any provisions of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances and the application of the remainder of this permit shall not be affected.

**B. RESPONSIBILITIES****11. Renewal Application**

If the permittee desires to continue to discharge, a permit renewal application shall be submitted at least one hundred eighty (180) days before this permit expires. If the permittee anticipates there will be no discharge after the expiration date of this permit, the Division should be promptly notified so that it can terminate the permit in accordance with Part II.B.5.

**12. Confidentiality**

Any information relating to any secret process, method of manufacture or production, or sales or marketing data which has been declared confidential by the permittee, and which may be acquired, ascertained, or discovered, whether in any sampling investigation, emergency investigation, or otherwise, shall not be publicly disclosed by any member, officer, or employee of the Commission or the Division, but shall be kept confidential. Any person seeking to invoke the protection of this Subsection (12) shall bear the burden of proving its applicability. This section shall never be interpreted as preventing full disclosure of effluent data.

**13. Fees**

The permittee is required to submit payment of an annual fee as set forth in the 1983 amendments to the Water Quality Control Act. Section 25-8-502 (l) (b), and the Colorado Discharge Permit System Regulations 5 CCR 1002-61, Section 61.15 as amended. Failure to submit the required fee when due and payable is a violation of the permit and will result in enforcement action pursuant to Section 25-8-601 et. seq., C.R.S. 1973 as amended.

**14. Duration of Permit**

The duration of a permit shall be for a fixed term and shall not exceed five (5) years. Filing of a timely and complete application shall cause the expired permit to continue in force to the effective date of the new permit. The permit's duration may be extended only through administrative extensions and not through interim modifications.

**15. Section 307 Toxics**

- a. If a toxic effluent standard or prohibition, including any applicable schedule of compliance specified, is established by regulation pursuant to Section 307 of the Federal Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the discharge permit, the Division shall institute proceedings to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

**16. Antibacksliding**

- a. A permit may not be renewed, reissued, or modified to contain effluent limitations adopted pursuant to Section 25-8-503(1)(b) (BPJ) of the Water Quality Control Act, which are less stringent than the comparable effluent limitations or standards in the previous permit, unless any one of the following exceptions is met and the conditions of paragraph (c) of this section are met:
  - i. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of less stringent effluent limitations; or
  - ii. Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation or standard at the time of permit issuance; or
  - iii. The Division determines that technical mistakes or mistaken interpretations of law were made in issuing the permit, which justified relaxation of the effluent limitations or standards; or
  - iv. A less stringent effluent limitation or standard is necessary because of events over which the permittee has no control and for which there is not reasonable available remedy; or
  - v. The permittee has received a permit variance; or
  - vi. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case, the limitations in the renewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

**B. RESPONSIBILITIES****16. Antibacksliding (continued)**

- b. A permit may not be renewed, reissued, or modified to contain effluent limitations adopted pursuant to 61.8(2)(b) or (c) of the Colorado Discharge Permit System Regulations that are less stringent than the comparable effluent limitations in the previous permit, unless any of the exceptions provided herein is met and the conditions of paragraph c. of this section are met.
  - i. In waters where the applicable water quality standard has not yet been attained, effluent limitations based on a total maximum daily load or other waste load allocation may be revised to be less stringent if the cumulative effect of all such revisions assures attainment of such water quality standard, or the designated use which is not being attained is removed in accordance with Section 31.6 of the Basic Standards.
  - ii. In waters where the applicable water quality standard has been attained, effluent limitations based on a total maximum daily load, other waste load allocation, or any other permitting standard (including any water quality standard) may be revised to be less stringent if such revision is subject to and consistent with the antidegradation provisions of Section 31.8 of the Basic Standards. Consistency with Section 31.8 shall be presumed if the waters in question have been designated by the Commission as "use protected"; or
  - iii. Whether or not the applicable water quality standard has been attained:
    - (A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justified the application of less stringent effluent limitations; or
    - (B) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is not reasonable available remedy; or
    - (C) The permittee has received a permit variance; or
    - (D) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case, the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).
- c. In no event may a permit with respect to which paragraphs a. and b. of this section apply be renewed, reissued, or modified to contain an effluent limitation or standard which is less stringent than required by federal effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into state waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of an applicable water quality standard.

**17. Effect of Permit Issuance**

- a. The issuance of a permit does not convey any property rights or any exclusive privilege.
- b. The issuance of a permit does not authorize any injury to person or property or any invasion of personal rights, nor does it authorize the infringement of federal, state, or local laws or regulations.
- c. Except for any toxic effluent standard or prohibition imposed under Section 307 of the Federal act or any standard for sewage sludge use or disposal under Section 405(d) of the Federal act, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 318, 403, and 405(a) and (b) of the Federal act. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Section 61.8(8) of the Colorado Discharge Permit System Regulations.
- d. Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage sludge use or disposal.

copy

# STATE OF COLORADO

Bill Owens, Governor  
Jane E. Norton, Executive Director

*Dedicated to protecting and improving the health and environment of the people of Colorado*

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Colorado Department  
of Public Health  
and Environment

## RATIONALE FOR PUBLIC NOTICE

MARCH 30, 2001

### SUNNYSIDE GOLD CORPORATION-TERRY TUNNEL

CDPS PERMIT NUMBER CO-0036056 SAN JUAN COUNTY

Enclosed is a copy of the draft permit renewal for your facility, which has been sent to public notice. There are thirty (30) days from the time of public notice to submit comments to the Division for consideration.

Because of the many changes that the permit may undergo before issuance, all changes and corrections will be made after the public notice period. If you have any questions, please do not hesitate to contact the Permits Unit at 692-3500.

Thank you for your cooperation.

Sincerely,

*Susan Nachtrieb*

Susan Nachtrieb, Permits Unit Manager  
Water Quality Protection Section  
Water Quality Control Division

xc: County Commissioners  
County Health Departments

Enclosure

NPDES PER ENF PRT SLG IU GEN  
DATE RCVD

MAR 30 2001

SECTION 1 2 3 4 5 6  
BY \_\_\_\_\_ BY \_\_\_\_\_

**COLORADO DISCHARGE PERMIT SYSTEM (CDPS)**

**SUMMARY OF RATIONALE**

**SUNNYSIDE GOLD CORPORATION**

**TERRY TUNNEL**

**CDPS PERMIT NUMBER CO-0036056, SAN JUAN COUNTY**

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**I. TYPE OF PERMIT** *Fifth Renewal, Major Industrial*

**II. FACILITY INFORMATION**

**A. Facility Type:** *Hardrock Mining - Mine Dewatering*  
**Fee Category:** *Category 03, Subcategory 3*  
**Category Flow Range:** *1.0 MGD or greater*  
**Annual Fee:** *\$1,519*

**B. SIC Code:** *1041*

**C. Legal and Facility Contact:** *Larry Perino, Reclamation Manager  
Sunnyside Gold Corporation  
P.O. Box 177  
Silverton, CO 81433  
(970) 387-5533 FAX: (970) 387-5310*

**D. Facility Location:** *T42N, R7W, approximately 2.6 miles N-NW of Silverton, CO.*

**E. Discharge Point:** *002A, which consists of flow from the Terry Tunnel, following treatment and prior to discharge to Eureka Creek.*

**III. RECEIVING STREAM**

**A. Identification, Classification and Standards**

- Identification: *Discharges to Eureka Creek, Segment 2 of the Animas and Florida River Sub-basin of the San Juan River and Dolores River Basins.*
- Classification: *This stream segment is designated as Use Protected and is classified for the following uses: Recreation, Class 2; Agriculture*

Issued \_\_\_\_\_ Effective \_\_\_\_\_ Expires \_\_\_\_\_

#### **IV. FACILITY DESCRIPTION**

##### **A. Industry Description**

1. Type of Industry: The industry that created the discharge was ore mining (gold, silver, lead, copper, and zinc). The mine shut down in 1991 and no active mining is currently occurring or planned. Reclamation work is in the final stages. The Terry Tunnel has been plugged, with the intention of ultimately eliminating flows.
2. Sources to the Treatment Plant: The discharge emanated from the portal of the Terry Tunnel, which has historically been used to access extensive underground mine workings. The permittee and the Division entered into a consent decree in May 1996 that addressed the discharges from the Sunnyside Mine complex. Under the consent decree, the permittee constructed an underground bulkhead in the Terry Tunnel at a point 3800 feet from the surface to stop drainage from the Sunnyside Mine through the Terry Tunnel. The bulkhead successfully stopped drainage until 1999 when the level of the Sunnyside Mine pool (created by bulkheading the American Tunnel and the Terry Tunnel) rose above the elevation of the Terry Tunnel bulkhead. As the pre-mining groundwater level was reestablished, flow increased from the Terry Tunnel, entering the tunnel downstream of the bulkhead. Based on analytical results, this water was not from the mine pool. When accessibility occurred during the 2000 season, the permittee determined that the flow had increased to 50-60 gpm and the permittee either pumped this flow back into the mine pool or treated this flow prior to discharge after construction of a near-surface bulkhead had started. After completion of the near-surface bulkhead, all flow has been eliminated. The permittee fully reclaimed the Terry Tunnel site by the end of the 2000 construction season. They believe that this construction has completely eliminated the discharge from the Terry Tunnel, however adequate time has not occurred for them to evaluate the effectiveness of the work. If, after an adequate period, the permittee concludes that the discharge has been permanently eliminated, they will submit a request to terminate this permit.
3. Chemicals Used - The only chemical used at the plant is hydrated lime, which is used for pH.

##### **B. Wastewater Treatment Description**

The treatment system would consist of pH adjustment with hydrated lime, and then settling in a series of two ponds.

Pursuant to the authority of Article 9, Title 25, Regulations for the Certification of Water Treatment Plant and Wastewater Treatment Plant Operators, every water treatment facility, domestic or industrial wastewater treatment facility shall be under the supervision of a certified operator holding a certification in a class equal to or higher than the class of the facility. Larry Perino and Glen Nordlander currently hold Class C industrial operator certification.

The Operator Certification Board is within the Colorado Department of Public Health and Environment and should be contacted at (303) 692-3550 for any questions relative to specific requirements.

#### **V. PERFORMANCE HISTORY**

##### **A. Monitoring Data**

1. Table V-1 summarizes the effluent data reported on the monthly Discharge Monitoring Reports (DMR's) for the Terry Tunnel facility from January 1999 through December 2000.

Table V-1 -- Self-Monitoring Results for Outfall 002

Parameter	No. of Reporting Periods	Reported Concentrations	Previous Permit Limit	No. of Limitation Excursions
		Avg/Min/Max		
Flow, MGD	3	0.0767/0.0158/0.134	Report	None
pH, s.u.	3	-6.9/8.73	7.0-9.7	0
Oil and Grease, mg/l	3	NV/NV/NV	10	0
Total Suspended Solids, mg/l				
30-day avg	3	2.83/2.0/3.5	30	0
7-day avg	3	5.67/2.0/10.0	45	0
Total Cadmium, mg/l				
30-day avg	3	0.0017/0.001/0.002	0.05	0
7-day avg	3	0.0017/0.001/0.002	0.1	0
Total Copper, mg/l				
30-day avg	3	0.006/0.002/0.011	0.15	0
7-day avg	3	0.0103/0.002/0.024	0.3	0
Total Lead, mg/l				
30-day avg	3	0.0113/0.0/0.024	0.3	0
7-day avg	3	0.021/0.0/0.053	0.6	0
Total Zinc, mg/l				
30-day avg	3	0.33/0.18/0.46	4.3	0
7-day avg	3	0.45/0.19/0.79	13.5	0
Total Dissolved Solids, mg/l	1	960	Report	None

NV means none visible

## VI. TERMS AND CONDITIONS OF PERMIT

### A. Determination of Effluent Limitations

1. Effluent Limitations: The following limitations will apply and are discussed in Section VI.A.2.

Table VI-1 – Effluent Limits for Point 002A

Effluent Parameter	Discharge Limitations - Max. Concentrations			Rationale
	30-Day Avg.	7-Day Avg.	Daily Max.	
Flow, MGD (min-max)	N/A	N/A	Report	Discharge Assessment
pH, s.u. (min-max)	N/A	N/A	7.0 - 9.7	Best Professional Judgment
Oil and Grease, mg/l	N/A	N/A	10	State Effluent Regulations
Total Suspended Solids, mg/l	30	45	N/A	State Effluent Regulations
Total Cadmium, mg/l	0.05	N/A	0.10	Best Professional Judgment
Total Copper, mg/l	0.15	N/A	0.30	Best Professional Judgment
Total Lead, mg/l	0.30	N/A	0.60	Best Professional Judgment
Total Zinc, mg/l	4.3	N/A	13.5	Best Professional Judgment
Total Dissolved Solids, mg/l	N/A	N/A	Report	Salinity Regulations

## 2. Discussion of Effluent Limitations

- a. Regulations for Effluent Limitations: The Regulations for Effluent Limitations (Regulation No. 62), apply to the conventional pollutants. For this facility the limitation for oil and grease and TSS is based on this regulation.
- b. Applicable Federal Effluent Guidelines and Standards: Since no active mining is occurring, no federal guidelines apply to this type of facility.
- c. Flow Limitation: None of the effluent limits are based upon a mass balance equation, therefore it is not necessary to require a flow limit. However, in order to assess the effectiveness of the tunnel plugging and the resultant impact on downstream segments, effluent flow monitoring will be required.
- d. Limits Based Upon Best Professional Judgment: No active mining is currently occurring. Therefore federal effluent limitations are not directly applicable. However, as a result of the consent decree between the permittee and the state, the permittee will operate the treatment plant in the same manner as that which was done during the terms of the previous permits, and effluent concentrations will likely be similar to those discharged in the past. For all metals except zinc, the previous treatment plant operation was likely to maintain compliance with federal limits. Therefore, for all metals except zinc, federal limits will continue to be used as Best Professional Judgment-based limitations in the permit.

For zinc, the previous treatment plant operation would not have achieved compliance with federal limits. Therefore, another approach to setting a limitation must be used. Using historical effluent concentrations, the 30-day average zinc limitation has been previously set equal to the mean plus three standard-deviations. For the daily maximum limitation, the same procedure was used, based upon measured daily maximum effluent concentrations. In compliance with the consent decree, these limitations will remain in effect.

- e. Antidegradation Since the receiving water is designated as Use Protected, an antidegradation review is not required pursuant to section 31.8(1)(b) of The Basic Standards and Methodologies for Surface Water.
- f. Salinity Regulations In compliance with the "Regulations for Implementation of the Colorado Salinity Standards Through the CDPS Permit Program", the permittee shall monitor for total dissolved solids on a quarterly basis. Samples shall be taken at the effluent discharge point.

## 3. Best Management Practices

In order to effectively manage the area and to prevent or minimize the potential for release of toxic substances and/or the occurrence of concentrations that may exceed permit effluent limitations, at a minimum, the following practices shall be followed:

- a. At least weekly inspection of the treatment facility to ensure that the pH adjustment facilities and sedimentation ponds are operating at optimal treatment capacity to meet permit limitations;
- b. At least twice a year cleaning and removal of sediments/sludge from the sedimentation ponds, once following spring runoff, and once at the end of the operational season while water treatment at significant levels is occurring. Otherwise, cleaning and removal of sediments/sludge from the sedimentation ponds shall be performed on a schedule that will maintain adequate capacity in the ponds.
- c. Regular inspection of both ponds to check for dike erosion, rodent or other animal damage, leaks or breaks in dikes, proper flow of water, maintenance of adequate sediments/sludge levels so that solids loading capacity problems do not exist, and to perform any needed repairs or maintenance.



4. Whole Effluent Toxicity (WET) Testing

The plugging of the Terry Tunnel has reduced mine flows to negligible levels and flow may have recently ceased. Additionally, the receiving stream has no aquatic life use classifications. As a result, the Division has determined that neither WET limitations nor monitoring are required for this permit. Should plans change, and a continuous discharge be projected to continue for a lengthy period into the future, the permit will be amended to include WET conditions at that time.

5. Consent Decree Requirements That Affect Permit

On May 8, 1996, the Division and the permittee entered into a complex Consent Decree. In conformance with this decree, the permittee constructed bulkheads within the Terry Tunnel with the goal of preventing surface discharge from the tunnel. The permittee has not been able to determine with certainty that this has caused the discharge from the tunnel to cease. Until a determination has been made that the discharge has permanently ceased, permit termination is not appropriate. Therefore, the permit is being renewed.

The Consent Decree stipulates that, as long as the permit remains in effect, it shall contain effluent limitations unchanged from the previous permit.

6. Stormwater Evaluation

Stormwater discharge permits are required for active and inactive metals mining facilities as covered under Standard Industrial Classification (SIC) Code 10.

Division records indicate that the Sunnyside Gold Corporation has coverage for stormwater discharges for the Terry Tunnel mine site under a General Stormwater Discharge Permit for stormwater discharges associated with Light Industrial activities, number COR-040058. Stormwater permitting issues for this mine will be handled separately by the Division's stormwater group, although this permit may be reopened at a later date to incorporate stormwater provisions, if deemed appropriate.

7. Economic Reasonableness Evaluation: The Colorado Discharge Permit System Regulations, Regulation No. 61, further define this requirement under 61.11 and state: "Where economic, environmental, public health and energy impacts to the public and affected persons have been considered in the classifications and standards setting process, permits written to meet the standards may be presumed to have taken into consideration economic factors unless:

- a) A new permit is issued where the discharge was not in existence at the time of the classification and standards rulemaking, or
- b) In the case of a continuing discharge, additional information or factors have emerged that were not anticipated or considered at the time of the classification and standards rulemaking."

The evaluation for this permit shows that the Water Quality Control Commission, during their proceedings to adopt the Classification and Numeric Standards for the San Juan and Dolores River Basins, considered economic reasonableness.

Furthermore, this is not a new discharger and no new information has been presented regarding the classifications and standards. Therefore, the water quality standard-based effluent limitations of this permit are determined to be reasonably related to the economic, environmental, public health and energy impacts to the public and affected persons and are in furtherance of the policies set forth in Sections 25-8-102 and 104. If the permittee disagrees with this finding, pursuant to 61.11(b)(ii) of the Colorado Discharge Permit System Regulations, the permittee should submit all pertinent information to the Division during the public notice period.

**B. Monitoring**

1. Effluent Monitoring: Effluent monitoring will be required as shown in Table VI-2. Refer to the permit for locations of monitoring points.

**Table VI-2 -- Effluent Monitoring Requirements**

<b>Effluent Parameter</b>	<b>Monitoring Frequency</b>	<b>Sample Type</b>
Flow, MGD	Weekly	Instantaneous
pH, s.u.	Weekly	In-Situ
Oil and Grease, mg/l	Weekly	Visual
Total Suspended Solids, mg/l	Weekly	Grab
Total Cadmium, mg/l	Weekly	Grab
Total Copper, mg/l	Weekly	Grab
Total Lead, mg/l	Weekly	Grab
Total Zinc, mg/l	Weekly	Grab
Total Dissolved Solids, mg/l	Quarterly	Grab

For every outfall with oil and grease monitoring, in the event an oil sheen or floating oil is observed, a grab sample shall be collected, analyzed, and reported on the appropriate DMR. In addition, corrective action shall be taken immediately to mitigate the discharge of oil and grease. A description of the corrective action taken should be included with the DMR.

Effluent monitoring is required during periods when the operation can be safely accessed. If the operation is not accessible due to snowcover, then this shall be reported.

**C. Reporting**

1. Discharge Monitoring Report: Sunnyside Gold Corporation must submit a Discharge Monitoring Report (DMR) on a monthly basis to the Division. This report should contain the required summarization of the test results for parameters shown in Table VI-2 and Part I.B.1 of the permit. See the permit, for details on such submission.
2. Special Reports: Special reports are required in the event of a spill, bypass, or other noncompliance. Please refer to Part II.A. of the permit for reporting requirements.

**D. Additional Terms and Conditions**

1. Signatory Requirements: Signatory requirements for reports and submittals are discussed in Part I, Section E.6. of the permit.
2. Materials Containment Plan: The permittee has previously submitted an engineered spill plan. An update to the plan is required to be filed within 90 days of the permit effective date, detailing all changes which have occurred since the original submittal. If no changes have occurred, a letter to this effect is required. For specific requirements, refer to Part I.D.1. of the permit.

**E. Waste Minimization/Pollution Prevention**

Waste minimization and pollution prevention are two terms that are becoming increasingly more common in industry today. Waste minimization includes reducing the amount of waste at the source through changes in industrial processes, and reuse and recycling of wastes for the original or some other purpose such as materials recovery or energy production.

*Pollution prevention goes hand-in-hand with waste minimization. If the waste is eliminated at the front of the line, it will not have to be treated at the end of the line. The direct benefits to the industry are often significant - both in terms of increased profit and in public relations.*

*This program can affect all areas of process and waste control with which your industry deals. Elimination or reduction of a wastewater pollutant can also result in a reduction of an air pollutant or a reduction in the amount of hazardous materials that you have to handle and/or dispose of.*

*This discharge permit does not specifically dictate waste minimization conditions at this time. We strongly encourage the permittee to develop a waste minimization plan. Several industries have already developed plans and found that implementation resulted in substantial savings. Both the Colorado Department of Public Health and the Environment and EPA have information and resources available to help you explore this topic.*

**F. Permit Termination**

*The permittee will be released from further permit responsibilities in accordance with conditions specified in the consent agreement.*

*Jon C. Kubic  
March 7, 2001*

**VII. REFERENCES**

- A. *Colorado Department of Public Health and Environment, Water Quality Control Commission. Regulation No. 31 The Basic Standards and Methodologies for Surface Water (5 CCR 1002-31). Denver: CDPHE, as revised 1/11/99 and effective 3/2/99.*
- B. *CO Dept. of Public Health and Environment, Water Quality Control Commission Regulation 38 Classifications and Numeric Standards for the San Juan and Dolores River Basins (5 CCR 1002-34). Denver: CDPHE, as revised 5/11/99.*
- C. *Colorado Department of Public Health and Environment, Water Quality Control Commission. Regulation No. 62 Regulations for Effluent Limitations (5 CCR 1002-62). Denver: CDPHE, as revised 11/9/98 and effective 12/30/98.*
- D. *Colorado Department of Public Health and Environment, Water Quality Control Commission. Regulation No. 61 Colorado Discharge Permit System Regulations. (5 CCR 1002-61). Denver: CDPHE, as revised 3/9/99 and effective 4/30/99.*
- E. *Colorado Department of Public Health and Environment, Water Quality Control Commission. Regulation No. 39 Colorado River Salinity Standards (5 CCR 1002-39). Denver: CDPHE, as revised 7/14/97 and effective 8/30/97.*
- F. *U.S. Government, Office of the Federal Register, National Archives and Records Administration. Code of Federal Regulations (Part 440). Washington: 1998.*

**VIII. PUBLIC NOTICE COMMENTS**

Permit No.: CO-0036056

County: San Juan

**AUTHORIZATION TO DISCHARGE UNDER THE  
COLORADO DISCHARGE PERMIT SYSTEM**

In compliance with the provisions of the Colorado Water Quality Control Act, (25-8-101 et seq., CRS, 1973 as amended) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.; the "Act") the

**SUNNYSIDE GOLD CORPORATION**

is authorized to discharge from the Terry Tunnel treatment facility located in the T42N, R7W, approximately 2.6 miles N-NW of Silverton, CO to Eureka Creek in accordance with effluent limitations, monitoring requirements and other conditions set forth in Part I and II hereof. All discharges authorized herein shall be consistent with the terms and conditions of this permit.

The applicant may demand an adjudicatory hearing within thirty days of the issuance of the final permit determination, per the Colorado Discharge Permit System Regulations, 61.7 (1). Should the applicant choose to contest any of the effluent limitations, monitoring requirements or other conditions contained herein, the applicant must comply with Section 24-4-104 CRS and the Colorado Discharge Permit System Regulations. Failure to contest any such effluent limitation, monitoring requirement, or other condition, constitutes consent to the condition by the Applicant.

This permit and the authorization to discharge shall expire at midnight, **May 31, 2006**.

Issued and Signed this      day of

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

J. David Holm, Director  
Water Quality Control Division

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**PART I**

**A. DEFINITION OF EFFLUENT LIMITATIONS**

**1. Effluent Limitations**

Beginning no later than the effective date of this permit and lasting through **May 31, 2006**, the permittee is authorized to discharge from outfall 002A, below the second treatment pond prior to entering Eureka Creek.

In accordance with the Water Quality Control Commission Regulations for Effluent Limitations and Colorado Discharge Permit System Regulations, Section 61.8(2), 5 C.C.R. 1002-61,, the permitted discharge shall not contain effluent parameter concentrations which exceed the following limitations specified below or exceed the specified flow limitation.

Effluent Parameter	Discharge Limitations		
	30-Day Avg.	7-Day Avg.	Daily Max.
Flow, MGD (min-max)	N/A	N/A	Report
pH, s.u. (min-max)	N/A	N/A	7.0 - 9.7
Oil and Grease, mg/l	N/A	N/A	10
Total Suspended Solids, mg/l	30	45	N/A
Total Cadmium, mg/l	0.05	N/A	0.10
Total Copper, mg/l	0.15	N/A	0.30
Total Lead, mg/l	0.30	N/A	0.60
Total Zinc, mg/l	4.3	N/A	13.5
Total Dissolved Solids, mg/l	N/A	N/A	Report

**2. Best Management Practices**

In order to effectively manage the area and to prevent or minimize the potential for release of toxic substances and/or the occurrence of concentrations that may exceed permit effluent limitations, at a minimum, the following practices shall be followed:

- At least weekly inspection of the treatment facility to ensure that the pH adjustment facilities and sedimentation ponds are operating at optimal treatment capacity to meet permit limitations;
- At least twice a year cleaning and removal of sediments/sludge from the sedimentation ponds, once following spring runoff, and once at the end of the operational season while water treatment at significant levels is occurring. Otherwise, cleaning and removal of sediments/sludge from the sedimentation ponds shall be performed on a schedule that will maintain adequate capacity in the ponds;
- Regular inspection of both ponds to check for dike erosion, rodent or other animal damage, leaks or breaks in dikes, proper flow of water, maintenance of adequate sediments/sludge levels so that solids loading capacity problems do not exist, and to perform any needed repairs or maintenance.

See Part I.C. for Definitions.

## B. MONITORING REQUIREMENTS

### 1. Frequency and Sample Type

In order to obtain an indication of the probable compliance or noncompliance with the effluent limitations specified in Part I.A.1, the permittee shall monitor all effluent parameters at the following frequencies. Such monitoring will begin immediately and last for the life of the permit unless otherwise noted. The results of such monitoring shall be reported on the Discharge Monitoring Report form (See Part I.E.).

Effluent Parameter	Monitoring Frequency	Sample Type
Flow, MGD	Weekly	Instantaneous
pH, s.u.	Weekly	In-Situ
Oil and Grease, mg/l	Weekly	Visual
Total Suspended Solids, mg/l	Weekly	Grab
Total Cadmium, mg/l	Weekly	Grab
Total Copper, mg/l	Weekly	Grab
Total Lead, mg/l	Weekly	Grab
Total Zinc, mg/l	Weekly	Grab
Total Dissolved Solids, mg/l	Quarterly	Grab

Self-monitoring sampling by the permittee for compliance with the monitoring requirements specified above shall be performed at the following location: 002A, after the outfall from the second treatment pond prior to entering Eureka Creek.

Effluent monitoring is required during periods when the operation can be safely accessed. If the operation is not accessible due to snowcover, then this shall be reported in lieu of monitoring.

If the permittee, using the approved analytical methods, monitors any parameter more frequently than required by this permit, then the results of such monitoring shall be included in the calculation and reporting of the values required in the Discharge Monitoring Report Form (DMRs) or other forms as required by the Division. Such increased frequency shall also be indicated.

#### Oil and Grease Monitoring

For every outfall with oil and grease monitoring, in the event an oil sheen or floating oil is observed, a grab sample shall be collected, analyzed, and reported on the appropriate DMR. In addition, corrective action shall be taken immediately to mitigate the discharge of oil and grease. A description of the corrective action taken should be included with the DMR.

## C. DEFINITIONS OF TERMS

1. "Daily Maximum limitation" means the limitation for this parameter shall be applied as an instantaneous maximum (or, for pH or DO, instantaneous minimum) value. The instantaneous value is defined as the analytical result of any individual sample. DMRs shall include the maximum (and/or minimum) of all instantaneous values within the calendar month. Any instantaneous value beyond the noted daily maximum limitation for the indicated parameter shall be considered a violation of this permit.
2. "Grab" sample, is a single "dip and take" sample so as to be representative of the parameter being monitored.
3. "In-situ" measurement is defined as a single reading, observation or measurement taken in the field at the point of discharge.

### C. DEFINITIONS OF TERMS

4. "Instantaneous" measurement is a single reading, observation, or measurement performed on site using existing monitoring facilities.
5. "Quarterly measurement frequency" means samples may be collected at any time during the calendar quarter if a continual discharge occurs. If the discharge is intermittent, then samples shall be collected during the period that discharge occurs.
6. "Seven (7) day average" means the arithmetic mean of all samples collected in a seven (7) consecutive day period. Such seven (7) day averages shall be calculated for all calendar weeks, which are defined as beginning on Sunday and ending on Saturday. If the calendar week overlaps two months (i.e. the Sunday is in one month and the Saturday in the following month), the seven (7) day average calculated for that calendar week shall be associated with the month that contains the Saturday. Samples may not be used for more than one reporting period.
7. "Thirty (30) day average" means the arithmetic mean of all samples collected during a thirty (30) consecutive-day period. The permittee shall report the appropriate mean of all self-monitoring sample data collected during the calendar month on the Discharge Monitoring Reports. Samples shall not be used for more than one reporting period.
8. "Total Metals" means the concentration of metals determined on an unfiltered sample following vigorous digestion (Section 4.1.3), or the sum of the concentrations of metals in both the dissolved and suspended fractions, as described in "*Manual of Methods for Chemical Analysis of Water and Wastes*," U.S. Environmental Protection Agency, March 1979, or its equivalent.
9. "Visual" observation is observing the discharge to check for the presence of a visible sheen or floating oil.
10. "Water Quality Control Division" or "Division" means the state Water Quality Control Division as established in 25-8-101 et al.)

Additional relevant definitions are found in the Colorado Water Quality Control Act, CRS " 25-8-101 et seq., the Colorado Discharge Permit System Regulations, 5 CCR 1002-61, and other applicable regulations.

### D. SPECIAL REQUIREMENTS

#### 1. Materials Containment Plan

Pursuant to Sections 6.9.3 (6) and (9) of the Regulations for the State Discharge Permit System, the permittee is required to submit a Materials Containment Plan. Such a plan was previously submitted to the Division. An update of the plan shall be submitted to the Division within ninety (90) days after the effective date of this permit and must be implemented. The update of the plan shall include changes in the information and procedures for the prevention and containment of spills of materials used, processed or stored at the facility which if spilled would have a reasonable probability of having a visible or otherwise detrimental impact on waters of the State <sup>1/2</sup>. The updated plan shall include, but not necessarily be limited to:

- a. An updated history of the spills which have occurred in the three (3) years preceding the effective date of this permit. The history shall include a discussion on the cause of the spills and a the preventative measures designed to eliminate them from reoccurring;
- b. An update of the reporting system which will be used to notify, at a minimum, responsible facility management, the Division, the Environmental Protection Agency, downstream water users within 5 miles downstream of the facility, and local health officials;



## D. SPECIAL REQUIREMENTS

### 1. Materials Containment Plan (continued)

- c. A description of any changes in the preventative facilities (including overall facility plot) which prevent, contain, or treat spills and unplanned discharges;
- d. A current list which includes the volumes or quantities of all materials used, processed, or stored at the facility which represent a potential spill threat to surface waters. The location of stored material shall be indicated on the facility plot submitted for item c;
- e. An implementation schedule for additional facilities which might be required in item c, but which are not yet operational;
- f. A current list of available outside contractors, agencies, or other sources which could be utilized in the event of a spill in order to clean up its effects. If the facility is capable of handling spills in-house, this shall be documented in the plan;
- g. Provision for yearly review and updating of the contingency plan, plus resubmission of the plan to the Division if conditions and/or procedures at the facility change the original plan.

The foregoing provisions shall in no way render inapplicable those requirements imposed by the Federal Water Pollution Control Act, 33 U.S.C. ' 1321, regulations promulgated thereunder, the Colorado Water Quality Control Act, and regulations promulgated thereunder. It is recommended that this plan be prepared by a professional engineer registered in the State of Colorado.

Nothing herein contained shall be construed as allowing any discharge to waters of the State other than through the discharge points specifically authorized in this permit. Nothing herein contained shall be construed as excusing any liability the permittee might have, civil or criminal, for any spill.

The submittal of a Spill Prevention Control and Countermeasure Plan (SPCC Plan) as required by 40 CFR Part 112 may satisfy all or part of this requirement. Should additional materials exist on site which are not addressed in the SPCC Plan, addressing those materials as per the above is required.

- 1/ If there is no such material present at the site, this shall be indicated in writing and submitted to the Division for review.
- 2/ If there is material present but the permittee feels there is not a reasonable probability of a spill impacting waters of the State, this shall be documented in writing and submitted to the Division for review. This documentation shall include; 1) distance to nearest surface waters, and; 2) a detailed description of any structure which prohibits the release of material onto the ground or into a conveyance system.

## E. GENERAL MONITORING, SAMPLING AND REPORTING REQUIREMENTS

### 1. Routine Reporting of Data

The DMR forms consist of four pages - the top "original" copy, and three attached no-carbon-required copies. After the DMR form has been filled out and signed, the four copies must be separated and distributed as follows: Reporting of the data gathered in compliance with Part I.B.1 shall be on a monthly basis. Reporting of all data gathered shall comply with the requirements of Part I.E. (General Requirements). Monitoring results shall be summarized for each month and reported on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1).

**E. GENERAL MONITORING, SAMPLING AND REPORTING REQUIREMENTS**

**1. Routine Reporting of Data (continued)**

The forms shall be mailed to the agencies listed below so they are received no later than the 28th day of the following month. If no discharge occurs during the reporting period, "No Discharge" shall be reported.

The DMR forms consist of four pages - the top "original" copy, and three attached no-carbon-required copies. After the DMR form has been filled out and signed, the four copies must be separated and distributed as follows:

The first original signed copy of each discharge monitoring report (DMR) shall be submitted to the Division at the following address:

Colorado Department of Public Health and Environment  
Water Quality Control Division  
WQCD-P-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

The first duplicate signed copy of each discharge monitoring report (DMR) shall be submitted to the following agency:

U.S. Environmental Protection Agency Region VIII  
Technical Enforcement Program (8ENF-T)  
Office of Enforcement, Compliance Assistance and Environmental Justice  
999 18th Street, Suite 300  
Denver, CO 80202-2466

The third and fourth copies are for the permittee records. The Discharge Monitoring Report forms shall be filled out accurately and completely in accordance with requirements of this permit and the instructions on the forms. They shall be signed by an authorized person as identified in Part I.E.6.

Calculations for all limitations which require the averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Division in the permit.

**2. Representative Sampling**

*Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and approval by the Division.*

If the permittee monitors at the point of discharge any pollutant limited by the permit more frequently than required by the permit, using approved test procedures or as specified in the permit, the result of this monitoring shall be included in the calculation and reporting of data to the Division.

**3. Analytical and Sampling Methods for Monitoring**

The permittee shall install, calibrate, use and maintain monitoring methods and equipment, including biological and indicated pollutant monitoring methods. All sampling shall be performed by the permittee according to specified methods in 40 C.F.R. Part 136; methods approved by EPA pursuant to 40 C.F.R. Part 136; or methods approved by the Division, in the absence of a method specified in or approved pursuant to 40 C.F.R. part 136.

**E. GENERAL MONITORING, SAMPLING AND REPORTING REQUIREMENTS**

**3. Analytical and Sampling Methods for Monitoring (continued)**

The analytical method selected for a parameter shall be the one that can measure the lowest detected limit for that parameter unless the permit limitation or stream standard for those parameters not limited, is within the testing range of another approved method. When requested in writing, the Division may approve an alternative analytical procedure or any significant modification to an approved procedure.

When the most sensitive analytical method which complies with this part, has a detection limit greater than or equal to the permit limit, the permittee shall report "less than (the detectable limit)," as appropriate. Such reports shall not be considered as violations of the permit limit. The present lowest method detection limits for specific parameters (which have limitations which are, in some cases, less than or equal to the detection limit) are as follows:

Cadmium	0.0003 mg/l
Copper	0.005 mg/l
Lead	0.005 mg/l
Zinc	0.05 mg/l

These limits apply to the total recoverable, dissolved, or the potentially dissolved fraction of metals.

**4. Records**

The permittee shall establish and maintain records. Those records shall include the following:

- (a) The date, type, exact location, and time of sampling or measurements;
- (b) The individual(s) who performed the sampling or measurements;
- (c) The date(s) the analyses were performed;
- (d) The individual(s) who performed the analyses;
- (e) The analytical techniques or methods used;
- (f) The results of such analyses; and
- (g) Any other observations which may result in an impact on the quality or quantity of the discharge as indicated in 40 CFR 122.44 (i)(1)(iii).

The permittee shall retain for a minimum of three (3) years records of all monitoring information, including all original strip chart recordings for continuous monitoring instrumentation, all calibration and maintenance records, copies of all reports required by this permit and records of all data used to complete the application for this permit. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Division or EPA.

**5. Flow Measuring Device**

If not already a part of the permitted facility, within ninety (90) days after the effective date of the permit, a flow measuring device shall be installed to give representative values of effluent quantities at the respective discharge points. Unless specifically exempted, or modified in Part I.E.5 of this permit, a flow measuring device will be applicable at all designated discharge points.

At the request of the Division, the permittee shall show proof of the accuracy of any flow-measuring device used in obtaining data submitted in the monitoring report. The flow-measuring device must indicate values within ten (10) percent of the actual flow being discharged from the facility.

**E. GENERAL MONITORING, SAMPLING AND REPORTING REQUIREMENTS**

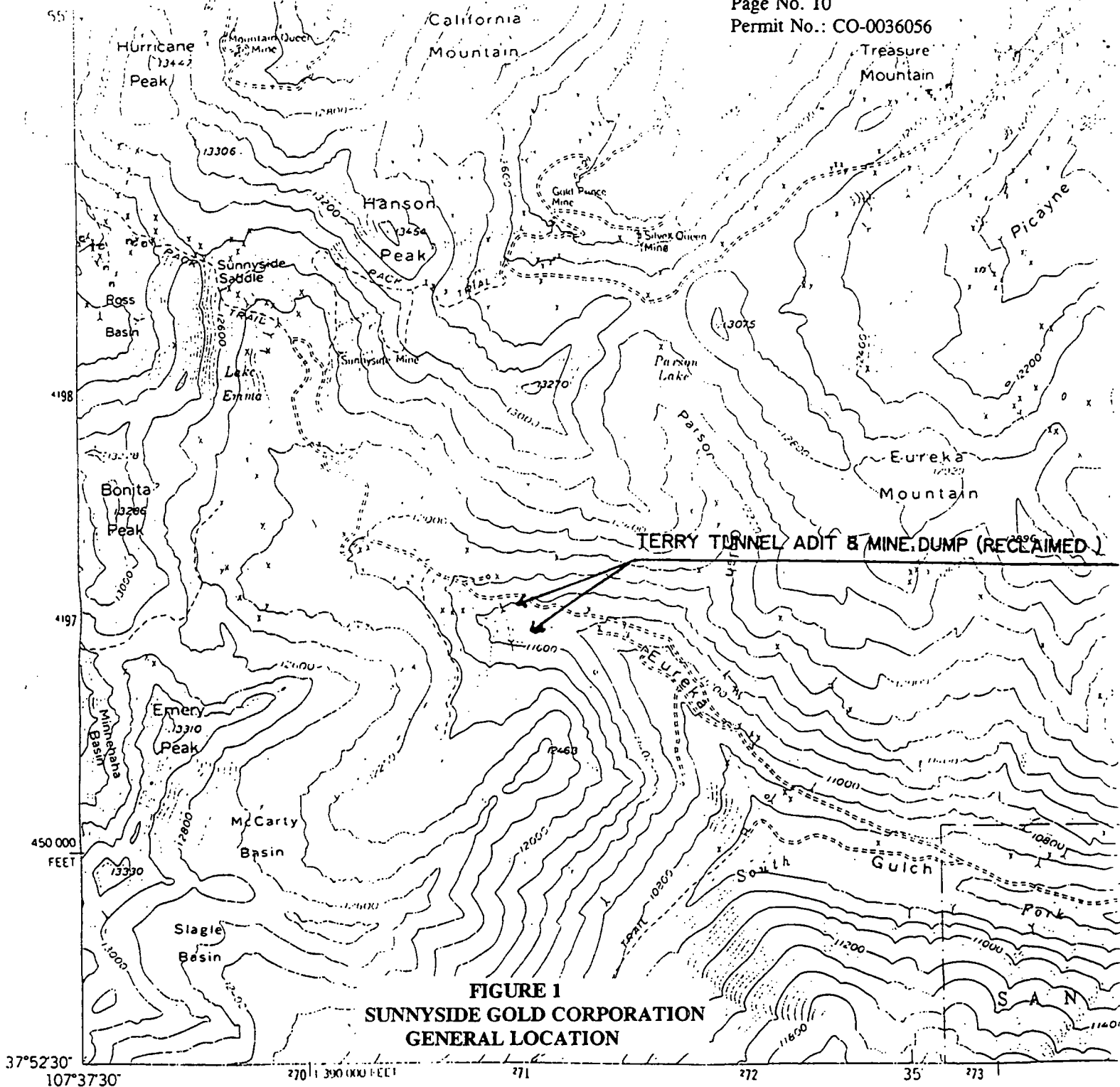
**6. Signatory and Certification Requirements**

- (a) All reports and other information required by the Division, shall be signed and certified for accuracy by the permittee in accord with the following criteria:
  - (i) In the case of corporations, by a principal executive officer of at least the level of vice-president or his or her duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the form originates;
  - (ii) In the case of a partnership, by a general partner;
  - (iii) In the case of a sole proprietorship, by the proprietor;
  - (iv) In the case of a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.
- (b) All reports required by permits, and other information requested by the Division shall be signed by a person as described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  - (i) The authorization is made in writing by a person described above;
  - (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and,
  - (iii) The written authorization is submitted to the Division.

If an authorization as described in this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this section must be submitted to the Division prior to or together with any reports, information, or applications to be signed by an authorized representative.

The permittee, or the duly authorized representative shall make and sign the following certification on all such documents:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."



**FIGURE 1**  
**SUNNYSIDE GOLD CORPORATION**  
**GENERAL LOCATION**

Mapped, edited, and published by the Geological Survey

Control by USGS and USC&GS

Topography from aerial photographs by multiplex methods  
Aerial photographs taken 1951 Field check 1955

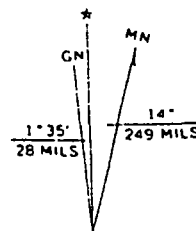
Polyconic projection. 1927 North American datum  
10,000-foot grid based on Colorado coordinate system,  
south zone

Land lines within this quadrangle (Tps 42 and 43 N and  
Rs. 6 and 7 W.) are omitted because of alleged fraud or  
defects in the surveys

Unchecked elevations are shown in brown

1000-meter Universal Transverse Mercator grid ticks,  
zone 13, shown in blue

There may be private inholdings within the boundaries of



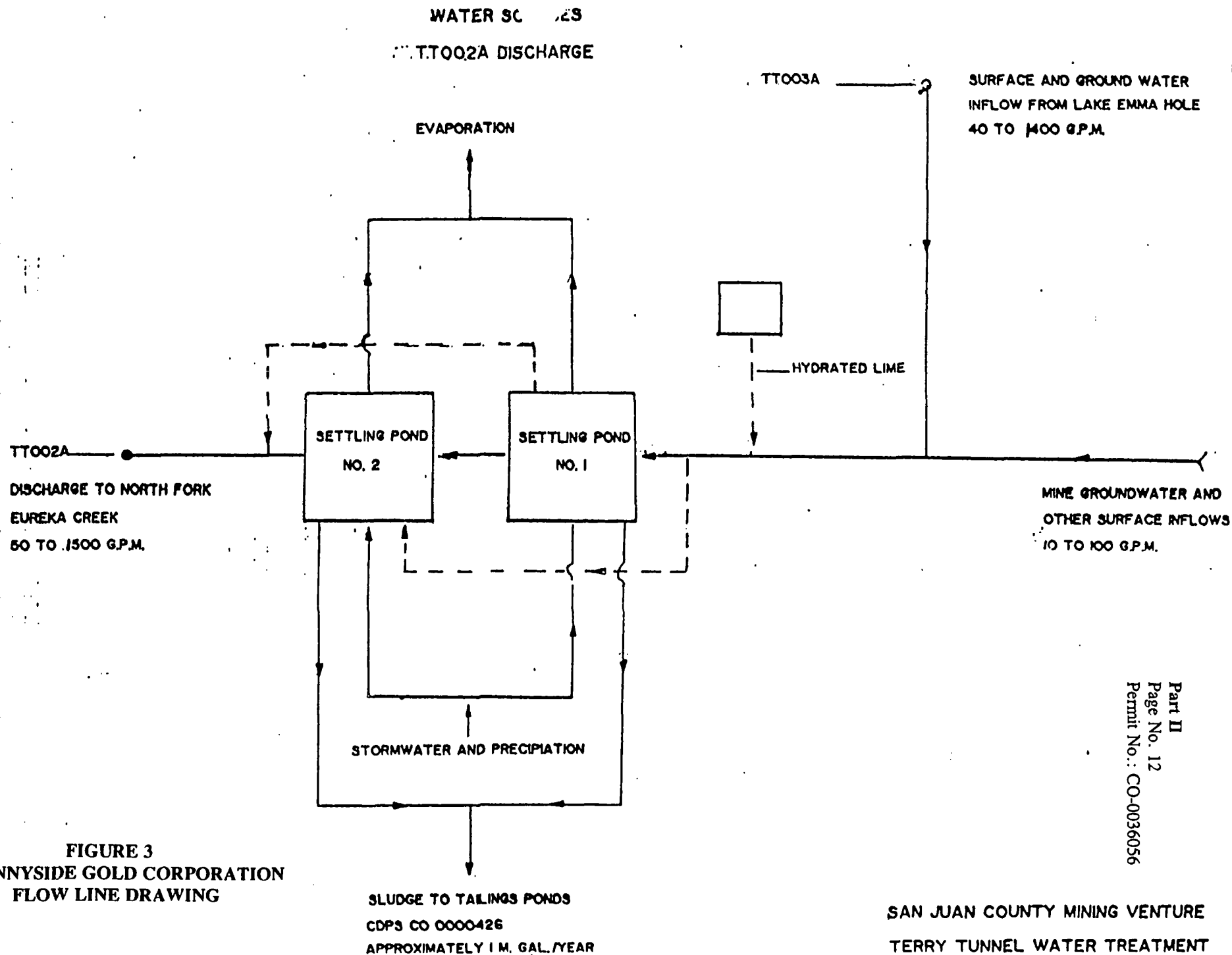
UTM GRID AND 1955 MAGNETIC NORTH  
DECLINATION AT CENTER OF SHEET

Map photoinspired 1975

No major culture or drainage changes observed

FOR SALE BY U. S. G.  
A FOLDER





**FIGURE 3**  
**SUNNYSIDE GOLD CORPORATION**  
**FLOW LINE DRAWING**

**SAN JUAN COUNTY MINING VENTURE**  
**TERRY TUNNEL WATER TREATMENT**

## A. NOTIFICATION REQUIREMENTS

### 1. Notification to Parties

All notification requirements under this section shall be directed as follows:

- a. Oral Notifications, other than for spills, during normal business hours shall be to:

Water Quality Protection Section  
Water Quality Control Division  
Telephone No.: (303) 692-3500

Spills notifications at any time and other notifications after hours shall be to :

Emergency Response Unit  
Office of the Environment  
Telephone No.: (303) 756-4455

- b. Written notification shall be to:

Water Quality Protection Section  
Water Quality Control Division  
Colorado Department of Public Health and Environment  
WQCD-WQP-B2  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

### 2. Change in Discharge

The permittee shall notify the Division, in writing, of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The alteration or addition could significantly change the nature or increase the quantity or pollutants discharged; or
- b. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported pursuant to an approved land application plan.

The permittee shall give advance notice to the Division of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

Whenever notification of any planned physical alterations or additions to the permitted facility is required pursuant to this section,, the permittee shall furnish the Division such plans and specifications which the Division deems reasonably necessary to evaluate the effect on the discharge, the stream, or ground water. If the Division finds that such new or altered discharge might be inconsistent with the conditions of the permit, the Division shall require a new or revised permit application and shall follow the procedures specified in Sections 61.5 through 61.6, and 61.15 of the Colorado Discharge Permit System Regulations.

### 3. Special Notifications - Definitions

- a. **Bypass:** The intentional diversion of waste streams from any portion of a treatment facility.
- b. **Severe Property Damage:** Substantial physical damage to property at the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. It does not mean economic loss caused by delays in production.
- c. **Spill:** An incident in which flows or solid materials are accidentally or unintentionally allowed to flow or escape so as to be lost from the treatment, processing or manufacturing system which may cause or threaten pollution of state waters.
- d. **Upset:** An exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.



**A. NOTIFICATION REQUIREMENTS**

**4. Noncompliance Notification**

- a. If, for any reason, the permittee does not comply with or will be unable to comply with any discharge limitations or standards specified in this permit, the permittee shall, at a minimum, provide the Division and EPA with the following information:
  - i. A description of the discharge and cause of noncompliance;
  - ii. The period of noncompliance, including exact dates and times and/or the anticipated time when the discharge will return to compliance; and
  - iii. Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.
- b. The permittee shall report the following circumstances orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances, and shall mail to the Division a written report containing the information requested in Part II.A.4 (a) within five (5) days after becoming aware of the following circumstances:
  - i. Circumstances leading to any noncompliance which may endanger health or the environment regardless of the cause of the incident;
  - ii. Circumstances leading to any unanticipated bypass which exceeds any effluent limitations in the permit;
  - iii. Circumstances leading to any upset or spill which causes an exceedance of any effluent limitation in the permit;
  - iv. Daily maximum violations for any of the pollutants limited by PART I.A of this permit and specified as requiring 24 hour notification. This includes any toxic pollutant or hazardous substance or any pollutant specifically identified as the method to control any toxic pollutant or hazardous substance.
- c. The permittee shall report instances of non-compliance which are not required to be reported within 24-hours at the time Discharge Monitoring Reports are submitted. The reports shall contain the information listed in sub-paragraph (a) of this section.

**5. Other Notification Requirements**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule in the permit shall be submitted no later than fourteen (14) days following each scheduled date, unless otherwise provided by the Division.

The permittee shall notify the Division, in writing, thirty (30) days in advance of a proposed transfer of permit as provided in Part II.B.4.

The permittee's notification of all anticipated noncompliance does not stay any permit condition.

All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Division as soon as they know or have reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - i. One hundred micrograms per liter (100 ug/l);
  - ii. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
  - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 61.4(2)(g).
  - iv. The level established by the Division in accordance with 40 C.F.R. § 122.44(f).
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - i. Five hundred micrograms per liter (500 ug/l);
  - ii. One milligram per liter (1 mg/l) for antimony; and

**A. NOTIFICATION REQUIREMENTS**

**5. Other Notification Requirements (continued)**

- iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application..
- iv. The level established by the Division in accordance with 40 C.F.R. § 122.44(f).

**6. Bypass Notification**

If the permittee knows in advance of the need for a bypass, a notice shall be submitted, at least ten days before the date of the bypass, to the Division. The bypass shall be subject to Division approval and limitations imposed by the Division. Violations of requirements imposed by the Division will constitute a violation of this permit.

**7. Upsets**

**a. Effect of an Upset.**

An upset constitutes an affirmative defense to an action brought for noncompliance with permit effluent limitations if the requirements of paragraph (b) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

**b. Conditions Necessary for a Demonstration of Upset**

A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed contemporaneous operating logs, or other relevant evidence that:

- i. An upset occurred and that the permittee can identify the specific cause(s) of the upset; and
- ii. The permitted facility was at the time being properly operated and maintained; and
- iii. The permittee submitted proper notice of the upset as required in Part II.A.3. of this permit (24-hour notice); and
- iv. The permittee complied with any remedial measure necessary to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

In addition to the demonstration required above, a permittee who wishes to establish the affirmative defense of upset for a violation of effluent limitations based upon water quality standards shall also demonstrate through monitoring, modeling or other methods that the relevant standards were achieved in the receiving water.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed contemporaneous operating logs, or other relevant evidence that:

- i. An upset occurred and that the permittee can identify the specific cause(s) of the upset; and
- ii. The permitted facility was at the time being properly operated and maintained; and
- iii. The permittee submitted proper notice of the upset as required in Part II.A.4. of this permit (24-hour notice); and
- iv. The permittee complied with any remedial measure necessary to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

In addition to the demonstration required above, a permittee who wishes to establish the affirmative defense of upset for a violation of effluent limitations based upon water quality standards shall also demonstrate through monitoring, modeling or other methods that the relevant standards were achieved in the receiving water.

**c. Burden of Proof**

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

**8. Discharge Point**

Any discharge to the waters of the State from a point source other than specifically authorized by this permit is prohibited.

## A. NOTIFICATION REQUIREMENTS

### 9. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee as necessary to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when necessary to achieve compliance with the conditions of the permit.

### 10. Minimization of Adverse Impact

The permittee shall take all reasonable steps to minimize or prevent any discharge of sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. As necessary, accelerated or additional monitoring to determine the nature and impact of the noncomplying discharge is required.

### 11. Removed Substances

Solids, sludges, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed in accordance with applicable state and federal regulations.

For all domestic wastewater treatment works, at industrial facilities, the permittee shall dispose of sludge in accordance with all State and Federal regulations.

### 12. Submission of Incorrect or Incomplete Information

Where the permittee failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or report to the Division, the permittee shall promptly submit the relevant information which was not submitted or any additional information needed to correct any erroneous information previously submitted

### 13. Bypass

- a. Bypasses are prohibited and the Division may take enforcement action against the permittee for bypass, unless:
  - i. The bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;
  - ii. There were no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - iii. Proper notices were submitted in compliance with Part II.A.4.
- b. "Severe property damage" as used in this Subsection means substantial physical damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- c. The permittee may allow a bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance or to assure optimal operation. These bypasses are not subject to the provisions of paragraph a. above.
- d. The Division may approve an anticipated bypass, after considering adverse effects, if the Division determines that the bypass will meet the conditions specified in paragraph a. above.

### 14. Reduction, Loss, or Failure of Treatment Facility

The permittee has the duty to halt or reduce any activity if necessary to maintain compliance with the effluent limitations of the permit. Upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production, control sources of wastewater, or all discharges, until the facility is restored or an alternative method of treatment is provided. This provision also applies to power failures, unless an alternative power source sufficient to operate the wastewater control facilities is provided.

It shall not be a defense for a permittee in an enforcement action that it would be necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

## **B. RESPONSIBILITIES**

### **1. Inspections and Right to Entry**

The permittee shall allow the Division and/or the authorized representative, upon the presentation of credentials:

- a. To enter upon the permittee's premises where a regulated facility or activity is located or in which any records are required to be kept under the terms and conditions of this permit;
- b. At reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit and to inspect any monitoring equipment or monitoring method required in the permit; and
- c. To enter upon the permittee's premises in a reasonable manner and at a reasonable time to inspect and/or investigate, any actual, suspected, or potential source of water pollution, or to ascertain compliance or non compliance with the Colorado Water Quality Control Act or any other applicable state or federal statute or regulation or any order promulgated by the Division. The investigation may include, but is not limited to, the following: sampling of any discharge and/or process waters, the taking of photographs, interviewing of any person having knowledge related to the discharge permit or alleged violation, access to any and all facilities or areas within the permittee's premises that may have any effect on the discharge, permit, or alleged violation. Such entry is also authorized for the purpose of inspecting and copying records required to be kept concerning any effluent source.
- d. The permittee shall provide access to the Division to sample the discharge at a point after the final treatment process but prior to the discharge mixing with state waters upon presentation of proper credentials.

In the making of such inspections, investigations, and determinations, the Division, insofar as practicable, may designate as its authorized representatives any qualified personnel of the Department of Agriculture. The Division may also request assistance from any other state or local agency or institution.

### **2. Duty to Provide Information**

The permittee shall furnish to the Division, within a reasonable time, any information which the Division may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Division, upon request, copies of records required to be kept by this permit.

### **3. Transfer of Ownership or Control**

- a. Except as provided in paragraph b. of this section, a permit may be transferred by a permittee only if the permit has been modified or revoked and reissued as provided in Section 61.8(8) of the Colorado Discharge Permit System Regulations, to identify the new permittee and to incorporate such other requirements as may be necessary under the Federal Act.
- b. A permit may be automatically transferred to a new permittee if:
  - i. The current permittee notifies the Division in writing 30 days in advance of the proposed transfer date; and
  - ii. The notice includes a written agreement between the existing and new permittee(s) containing a specific date for transfer of permit responsibility, coverage and liability between them; and
  - iii. The Division does not notify the existing permittee and the proposed new permittee of its intent to modify, or revoke and reissue the permit.
  - iv. Fee requirements of the Colorado Discharge Permit System Regulations, Section 61.15 have been met.

### **4. Availability of Reports**

Except for data determined to be confidential under Section 308 of the Federal Clean Water Act and Colorado Discharge Permit System Regulations 5 CCR 1002-61, Section 61.5.(4), all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Division and the Environmental Protection Agency.

The name and address of the permit applicant(s) and permittee(s), permit applications, permits and effluent data shall not be considered confidential. Knowingly making false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the Federal Clean Water Act, and Section 25-8-610 C.R.S.

### **5. Modification, Suspension, Revocation, or Termination of Permits By the Division**

The filing of a request by the permittee for a permit modification, revocation and reissuance/termination or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

- a. A permit may be modified, suspended, or terminated in whole or in part during its term for reasons determined by the Division including, but not limited to, the following:

## B. RESPONSIBILITIES

### 5. Modification, Suspension, Revocation, or Termination of Permits By the Division

- i. Violation of any terms or conditions of the permit;
  - ii. Obtaining a permit by misrepresentation or failing to disclose any fact which is material to the granting or denial of a permit or to the establishment of terms or conditions of the permit; or
  - iii. Materially false or inaccurate statements or information in the permit application or the permit.
  - iv. A determination that the permitted activity endangers human health or the classified or existing uses of state waters and can only be regulated to acceptable levels by permit modifications or termination.
- b. A permit may be modified in whole or in part for the following causes, provided that such modification complies with the provisions of Section 61.10 of the Colorado Discharge Permit System Regulations:
- i. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
  - ii. The Division has received new information which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of different permit conditions at the time of issuance. For permits issued to new sources or new dischargers, this cause includes information derived from effluent testing required under Section 61.4(7)(e) of the Colorado Discharge Permit System Regulations. This provision allows a modification of the permit to include conditions that are less stringent than the existing permit only to the extent allowed under Section 61.10 of the Colorado Discharge Permit System Regulations.
  - iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:
    - (A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved water quality standard, or an effluent limitation set forth in 5 CCR 1002-62, § 62 et seq.; and
    - (B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a Commission action with respect to the water quality standard or effluent limitation on which the permit condition was based; and
    - (C) The permittee requests modification after the notice of final action by which the EPA effluent limitation guideline, water quality standard, or effluent limitation is revised, withdrawn, or modified; or
    - (D) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this Regulation, within ninety (90) days of judicial remand.
  - iv. The Division determines that good cause exists to modify a permit condition because of events over which the permittee has no control and for which there is no reasonable available remedy.
  - v. The permittee has received a variance.
  - vi. When required to incorporate applicable toxic effluent limitation or standards adopted pursuant to § 307(a) of the Federal act.
  - vii. When required by the reopener conditions in the permit.
  - viii. As necessary under 40 C.F.R. 403.8(e), to include a compliance schedule for the development of a pretreatment program.
  - ix. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under Section 61.8(2) of the Colorado Discharge Permit System Regulations.
  - x. To establish a pollutant notification level required in Section 61.8(5) of the Colorado Discharge Permit System Regulations.

**B. RESPONSIBILITIES**

**5. Modification, Suspension, Revocation, or Termination of Permits By the Division (continued)**

- xi. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions, to the extent allowed in Section 61.10 of the Colorado Discharge Permit System Regulations.
- xii. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.
- xiii. For any other cause provided in Section 61.10 of the Colorado Discharge Permit System Regulations.
- c. At the request of a permittee, the Division may modify or terminate a permit and issue a new permit if the following conditions are met:
  - i. The Regional Administrator has been notified of the proposed modification or termination and does not object in writing within thirty days of receipt of notification,
  - ii. The Division finds that the permittee has shown reasonable grounds consistent with the Federal and State statutes and regulations for such modifications or termination;
  - iii. Requirements of Section 61.15 of the Colorado Discharge Permit System Regulations have been met, and
  - iv. Requirements of public notice have been met.
- d. Permit modification (except for minor modifications), termination or revocation and reissuance actions shall be subject to the requirements of Sections 61.5(2), 61.5(3), 61.6, 61.7 and 61.15 of the Colorado Discharge Permit System Regulations. The Division shall act on a permit modification request, other than minor modifications requests, within 180 days of receipt thereof. Except for minor modifications, the terms of the existing permit govern and are enforceable until the newly issued permit is formally modified or revoked and reissued following public notice.
- e. Upon consent by the permittee, the Division may make minor permit modifications without following the requirements of Sections 61.5(2), 61.5(3), 61.7 and 61.15 of the Colorado Discharge Permit System Regulations. Minor modifications to permits are limited to:
  - i. Correcting typographical errors; or
  - ii. Increasing the frequency of monitoring or reporting by the permittee; or
  - iii. Changing an interim date in a schedule of compliance, provided the new date of compliance is not more than 120 days after the date specific in the existing permit and does not interfere with attainment of the final compliance date requirement; or
  - iv. Allowing for a transfer in ownership or operational control of a facility where the Division determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittees has been submitted to the Division; or
  - v. Changing the construction schedule for a discharger which is a new source, but no such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge; or
  - vi. Deleting a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.
- f. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.
- g. The filing of a request by the permittee for a permit modification, revocation and reissuance or termination does not stay any permit condition.
- h. All permit modifications and reissuances are subject to the antibacksliding provisions set forth in 61.10 (e) through (g).

**6. Oil and Hazardous Substance Liability**

- Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under Section 311 (Oil and Hazardous Substance Liability) of the Clean Water Act.

## B. RESPONSIBILITIES

### 7. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority granted by Section 510 of the Clean Water Act.

### 8. Permit Violations

Failure to comply with any terms and/or conditions of this permit shall be a violation of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit.

### 9. Property Rights

The issuance of this permit does not convey any property or water rights in either real or personal property, or stream flows, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

### 10. Severability

The provisions of this permit are severable. If any provisions of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances and the application of the remainder of this permit shall not be affected.

### 11. Renewal Application

If the permittee desires to continue to discharge, a permit renewal application shall be submitted at least one hundred eighty (180) days before this permit expires. If the permittee anticipates there will be no discharge after the expiration date of this permit, the Division should be promptly notified so that it can terminate the permit in accordance with Part II.B.5.

### 12. Confidentiality

Any information relating to any secret process, method of manufacture or production, or sales or marketing data which has been declared confidential by the permittee, and which may be acquired, ascertained, or discovered, whether in any sampling investigation, emergency investigation, or otherwise, shall not be publicly disclosed by any member, officer, or employee of the Commission or the Division, but shall be kept confidential. Any person seeking to invoke the protection of this Subsection (12) shall bear the burden of proving its applicability. This section shall never be interpreted as preventing full disclosure of effluent data.

### 13. Fees

The permittee is required to submit payment of an annual fee as set forth in the 1983 amendments to the Water Quality Control Act, Section 25-8-502 (1) (b), and the Colorado Discharge Permit System Regulations 5 CCR 1002-61, Section 61.15 as amended. Failure to submit the required fee when due and payable is a violation of the permit and will result in enforcement action pursuant to Section 25-8-601 et. seq., C.R.S. 1973 as amended.

### 14. Duration of Permit

The duration of a permit shall be for a fixed term and shall not exceed five (5) years. Filing of a timely and complete application shall cause the expired permit to continue in force to the effective date of the new permit. The permit's duration may be extended only through administrative extensions and not through interim modifications.

### 15. Section 307 Toxics

If a toxic effluent standard or prohibition, including any applicable schedule of compliance specified, is established by regulation pursuant to Section 307 of the Federal Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the discharge permit, the Division shall institute proceedings to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

### 16. Antibacksliding

- a. A permit may not be renewed, reissued, or modified to contain effluent limitations adopted pursuant to Section 25-8-503(1)(b) (BPJ) of the Water Quality Control Act, which are less stringent than the comparable effluent limitations or standards in the previous permit, unless any one of the following exceptions is met and the conditions of paragraph (c) of this section are met:

**B. RESPONSIBILITIES**

- i. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of less stringent effluent limitations; or
  - ii. Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation or standard at the time of permit issuance; or
  - iii. The Division determines that technical mistakes or mistaken interpretations of law were made in issuing the permit, which justified relaxation of the effluent limitations or standards; or
  - iv. A less stringent effluent limitation or standard is necessary because of events over which the permittee has no control and for which there is not reasonable available remedy; or
  - v. The permittee has received a permit variance; or
  - vi. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case, the limitations in the renewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).
- b. A permit may not be renewed, reissued, or modified to contain effluent limitations adopted pursuant to 61.8(2)(b) or (c) of the Colorado Discharge Permit System Regulations that are less stringent than the comparable effluent limitations in the previous permit, unless any of the exceptions provided herein is met and the conditions of paragraph c. of this section are met.
- i. In waters where the applicable water quality standard has not yet been attained, effluent limitations based on a total maximum daily load or other waste load allocation may be revised to be less stringent if the cumulative effect of all such revisions assures attainment of such water quality standard, or the designated use which is not being attained is removed in accordance with Section 31.6 of the Basic Standards.
  - ii. In waters where the applicable water quality standard has been attained, effluent limitations based on a total maximum daily load, other waste load allocation, or any other permitting standard (including any water quality standard) may be revised to be less stringent if such revision is subject to and consistent with the antidegradation provisions of Section 31.8 of the Basic Standards. Consistency with Section 31.8 shall be presumed if the waters in question have been designated by the Commission as "use protected"; or
  - iii. Whether or not the applicable water quality standard has been attained:
    - (A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justified the application of less stringent effluent limitations; or
    - (B) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is not reasonable available remedy; or
    - (C) The permittee has received a permit variance; or
    - (D) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case, the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).
- c. In no event may a permit with respect to which paragraphs a. and b. of this section apply be renewed, reissued, or modified to contain an effluent limitation or standard which is less stringent than required by federal effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into state waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of an applicable water quality standard.

**17. Effect of Permit Issuance**

- a. The issuance of a permit does not convey any property rights or any exclusive privilege.
- b. The issuance of a permit does not authorize any injury to person or property or any invasion of personal rights, nor does it authorize the infringement of federal, state, or local laws or regulations.
- c. Except for any toxic effluent standard or prohibition imposed under Section 307 of the Federal act or any standard for sewage sludge use or disposal under Section 405(d) of the Federal act, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 318, 403, and 405(a) and (b) of the Federal act. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Section 61.8(8) of the Colorado Discharge Permit System Regulations.
- d. Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage sludge use or disposal.



# STATE OF COLORADO

Bill Owens, Governor  
Jane E. Norton, Executive Director

*Dedicated to protecting and improving the health and environment of the people of Colorado*

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Colorado Department  
of Public Health  
and Environment

## RATIONALE FOR PUBLIC NOTICE

MARCH 30, 2001

### SUNNYSIDE GOLD CORPORATION-AMERICAN TUNNEL

#### CDPS PERMIT NUMBER CO-0027529 SAN JUAN COUNTY

Enclosed is a copy of the draft permit renewal for your facility, which has been sent to public notice. There are thirty (30) days from the time of public notice to submit comments to the Division for consideration.

Because of the many changes that the permit may undergo before issuance, all changes and corrections will be made after the public notice period. If you have any questions, please do not hesitate to contact the Permits Unit at 692-3500.

Thank you for your cooperation.

Sincerely,

*Susan Nachtrieb*

Susan Nachtrieb, Permits Unit Manager  
Water Quality Protection Section  
Water Quality Control Division

xc: County Commissioners  
County Health Departments

Enclosure

NPDES PER ENF PRT SLG IU GEN  
DATE RCVD

MAR 30 2001

SECTION 1 2 3 4 5 6  
BY \_\_\_\_\_

**COLORADO DISCHARGE PERMIT SYSTEM (CDPS)**

**SUMMARY OF RATIONALE**

**SUNNYSIDE GOLD CORPORATION**

**AMERICAN TUNNEL**

**CDPS PERMIT NUMBER CO-0027529, SAN JUAN COUNTY**

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**I. TYPE OF PERMIT** *Fifth Renewal, Major Industrial*

**II. FACILITY INFORMATION**

**A. Facility Type:** *Hardrock Mining - Mine Dewatering*  
**Fee Category:** *Category 03, Subcategory 3*  
**Category Flow Range:** *1.0 MGD or greater*  
**Annual Fee:** *\$1,519*

**B. SIC Code:** *1041*

**C. Legal and Facility Contact:** *Larry Perino, Reclamation Manager  
Sunnyside Gold Corporation  
P.O. Box 177  
Silverton, CO 81433  
(970) 387-5533 FAX: (970) 387-5310*

**D. Facility Location:** *In the NE1/4, Section 21, T42N, R7W; Latitude: 37° 53' 29" North, longitude: 107° 38' 46" West; approx. 200 ft. south of the endpost of the west fork of Colorado Hwy 110 starting at Silverton, CO.*

**E. Discharge Point:** *004A, the outfall from the fourth treatment pond, which consists of flow from the American Tunnel, and potentially. other sources as shown in the table in section III.B. A portion of the receiving stream may be diverted into the treatment plant. Following treatment, the effluent is discharged to Cement Creek.*

**III. RECEIVING STREAM**

**A. Identification, Classification and Standards**

- Identification: *Discharges to Cement Creek, Segment 7 of the Animas and Florida River Sub-basin of the San Juan River and Dolores River Basins.*
- Classification: *This stream segment is designated as Use Protected and is classified for the following uses: Recreation, Class 2; Agriculture*

Issued \_\_\_\_\_ Effective \_\_\_\_\_ Expires \_\_\_\_\_

3. Numeric Standards: The standards which have been assigned in accordance with the above classifications can be found in the Classifications and Numeric Standards for the San Juan River and Dolores River Basins, Regulation No. 34 (5 CCR 1002-34), which became effective December 30, 1998.

#### IV. FACILITY DESCRIPTION

##### A. Industry Description

1. Type of Industry: The industry that created the discharge was ore mining (gold, silver, lead, copper, and zinc). The mine shut down in 1991 and no active mining is currently occurring or planned. Reclamation work is in the final stages. The American Tunnel is in the process of being plugged, with the intention of reducing and ultimately eliminating flows.
2. Sources to the Treatment Plant: The discharge being treated emanates from the portal of the American Tunnel, which has historically been used to access extensive underground mine workings. The permittee has been negotiating arrangements with the Colorado Division of Minerals and Geology (CDMG) related to the plugging of this tunnel. The permittee and the Division entered into a consent decree in May 1996 that addressed the discharges from the Sunnyside Mine complex. Under the consent decree, the permittee was to construct an underground bulkhead at their property line 8000 feet from the surface to stop drainage from the Sunnyside Mine through the American Tunnel. Until this bulkhead is constructed, flows entering the American Tunnel on Gold King Mines Corporation property, downstream of the property line bulkhead, will continue to be treated. A mandatory time during which the permittee was also required to treat a portion of the flow of the receiving stream, Cement Creek, has elapsed (this treatment began in August 1996); however, the permittee has continued to treat this flow. The permittee is currently working on obtaining approval from the CDMG for construction of the bulkhead.

##### B. Wastewater Treatment Description

Outfall 004 is the sole discharge point from this facility. Sources included in outfall 004 are summarized in the table below:

Source	Treatment	Avg Flow, MGD	D. Max Flow, MGD
Mine drainage	pH adjustment, floc, sedimentation	1.1	1.2
Cement Creek Flow	pH adjustment, floc, sedimentation	0.7	1.4
Groundwater Inflow	Mixed with treated water	0.03	0.07
Reagent Mix Water	Used for mixing with reagents	0.03	0.03
Stormwater Inflow	Mixed with treated water	0.06*	0.12**

\* represents average annual precipitation for contributing area X runoff factor.

\*\* represents 1.7" storm event for contributing area X runoff factor.

The treatment system consists of pH adjustment with quicklime, flocculent addition, and then settling in a series of four unlined ponds with a combined volume of 2.101 MG. Plant capacity is estimated to be 3.0 MGD, primarily limited by lime feed rate.

The chemicals used at the plant include quicklime, which is used for pH adjustment, and flocculant that is used to aid settling. The latest information available to the Division indicates that the specific flocculant being used is Nalco 7877. This chemical is a polyacrylamide in a hydrocarbon solvent/water emulsion. Aquatic toxicity test results summarized on the MSDS for this chemical at 1% solution indicate that it is slightly toxic to aquatic life.

Pursuant to the authority of Article 9, Title 25, Regulations for the Certification of Water Treatment Plant and Wastewater Treatment Plant Operators, every water treatment facility, domestic or industrial wastewater treatment facility shall be under the supervision of a certified operator holding a certification in a class equal to or higher than the class of the facility. Larry Perino and Glen Nordlander currently hold Class C industrial operator certification.

The Operator Certification Board is within the Colorado Department of Public Health and Environment and should be contacted at (303) 692-3550 for any questions relative to specific requirements.

## V. PERFORMANCE HISTORY

### A. Monitoring Data

1. Table V-1 summarizes the effluent data reported on the monthly Discharge Monitoring Reports (DMR's) for outfall 004 at the American Tunnel facility from January 1999 through December 2000.

Table V-1 -- Self-Monitoring Results for Outfall 004

Parameter	No. of Reporting Periods	Reported Concentrations	Previous Permit Limit	No. of Limitation Excursions
		Avg/Min/Max		
Flow, MGD	24	1.52/0.93/2.06	Report	None
pH, s.u.	24	-/9.05/9.97	7.0-10.0	0
Oil and Grease, mg/l	24	NV/NV/NV	10	0
Total Suspended Solids, mg/l				
30-day avg	24	8.4/3.0/17	20	0
7-day avg	24	13.7/5.5/32.0	30	1
Total Cadmium, mg/l				
30-day avg	24	0.0003/0.0/0.002	0.05	0
7-day avg	24	0.0013/0.0/0.01	0.1	0
Total Copper, mg/l				
30-day avg	24	0.0066/0.0/0.02	0.15	0
7-day avg	24	0.0164/0.0/0.05	0.3	0
Total Lead, mg/l				
30-day avg	24	0.0/0.0/0.001	0.3	0
7-day avg	24	0.0007/0.0/0.01	0.6	0
Total Zinc, mg/l				
30-day avg	24	0.18/0.06/0.55	4.3	0
7-day avg	24	0.31/0.1/0.82	13.5	0
Total Dissolved Solids, mg/l	4	1923/1400/2290	Report	None

NV means none visible

## VI. TERMS AND CONDITIONS OF PERMIT

### A. Determination of Effluent Limitations

1. *Effluent Limitations: The following limitations will apply to outfall 004 and are discussed in Section VI.A.2.*

*Table VI-1 -- Effluent Limitations for Outfall 004*

Effluent Parameter	Limitations		Rationale
	30-Day Avg.	Daily Max.	
Flow, MGD (min-max)	N/A	Report	Discharge Assessment
pH, s.u. (min-max)	N/A	7.0 - 10.0	BPJ/Consent Decree
Oil and Grease, mg/l	N/A	10	State Effluent Regulations
Total Suspended Solids, mg/l	20	30	BPJ/Consent Decree
Total Cadmium, mg/l	0.05	0.10	BPJ/Consent Decree
Total Copper, mg/l	0.15	0.30	BPJ/Consent Decree
Total Lead, mg/l	0.30	0.60	BPJ/Consent Decree
Total Zinc, mg/l	0.75	1.5	BPJ/Consent Decree
Total Dissolved Solids, mg/l	N/A	Report	Salinity Regulations

*BPJ means Best Professional Judgment*

### 2. Discussion of Effluent Limitations

- a. Regulations for Effluent Limitations: *The Regulations for Effluent Limitations (Regulation No. 62), apply to the conventional pollutants. For this facility the limitation for oil and grease is based on this regulation.*
- b. Applicable Federal Effluent Guidelines and Standards: *Since no active mining is occurring, no federal guidelines directly apply to this type of facility.*
- c. Flow Limitation: *The permittee has entered into a consent agreement with the Division, which specifies how the combination of American Tunnel flow and the flows in Cement Creek and its tributaries will be routed through the treatment plant. The flow routing procedure may be relatively complicated and specification of a single flow limit may not be possible. Therefore, only effluent flow reporting will be required.*
- d. Limits Based Upon Best Professional Judgment: *The previous permits contained effluent limits for total suspended solids and metals that were based upon the federal effluent regulations (BAT). And, the pH limit was based upon a BPJ adjustment to the State Effluent Regulation limit, which resulted from the Division's consideration of impacts to the receiving stream.*

*No active mining is currently occurring, nor is any mining expected in the future. Therefore federal BAT limitations are not directly applicable. However, as a result of the consent decree between the permittee and the state, the permittee will operate the treatment plant in the same manner as that which was done during the term of the previous permits, and effluent concentrations will likely be similar to those discharged in the past. The consent decree stipulates that the same limits for TSS, metals and pH contained in the previous permits will be implemented in subsequent renewal permits.*

- e. Antidegradation: *Since the receiving water is Use Protected, an antidegradation review is not required pursuant to section 31.8(1)(b) of The Basic Standards and Methodologies for Surface Water.*

- f. Salinity Regulations: In compliance with the "Regulations for Implementation of the Colorado Salinity Standards Through the CDPS Permit Program", the permittee shall monitor for total dissolved solids on a quarterly basis. Samples shall be taken at the effluent discharge point.

3. Whole Effluent Toxicity (WET) Testing

The plugging of the American Tunnel has reduced mine flows to negligible levels and flow may soon cease. Additionally, the receiving stream has no aquatic life use classifications. As a result, the Division has determined that neither WET limitations nor monitoring are required for this permit. Should plans change, and a continuous discharge be projected to continue for a lengthy period into the future, the permit will be amended to include WET conditions at that time.

4. Consent Decree Requirements That Affect Permit

On May 8, 1996, the Division and the permittee entered into a complex Consent Decree. This decree stipulated, among several other items, that the permittee will construct bulkheads within the American Tunnel with the goal of preventing surface discharge from the tunnel. The latest information available to the Division indicates that the permittee has not completed this bulkhead, thus discharge continues and is treated by the permittee and discharged.

This Consent Decree further stipulates that the Division will consider whether permit termination is appropriate if the following items occur:

- a) Five years have elapsed since the date of valve closure at the American Tunnel property line plug;
- b) Two years have elapsed since notice of mine pool equilibrium have been given;
- c) Valves and pipes in the seals in the American and Terry Tunnels have been grouted;
- d) Hydrologic controls and seals eliminating flows from the lower American Tunnel portal have been completed, or this permit has been accepted by another party or parties;
- e) All projects listed as "A" list projects in the Consent Decree have been confirmed by the Division as completed;
- f) Treatment of Cement Creek has ceased;
- g) It is demonstrated that Reference Water Quality, as defined in the Consent Decree, is being maintained without continued treatment of Cement Creek.

None of these activities have been completed at the time of this permit rationale, thus consideration of permit termination is not appropriate at this time. Therefore, the permit is being renewed.

The Consent Decree stipulates that, as long as the permit remains in effect, it shall contain effluent limitations unchanged from the previous permit.

5. Stormwater Evaluation

Stormwater discharge permits are required for active and inactive metals mining facilities as covered under Standard Industrial Classification (SIC) Code 10.

Division records indicate that the Sunnyside Gold Corporation has coverage for stormwater discharges for the American Tunnel mine site under a General Stormwater Discharge Permit for stormwater discharges associated with Light Industrial activities, number COR-040052. Stormwater permitting issues for this mine will be handled separately by the Division's stormwater group, although this permit may be reopened at a later date to incorporate stormwater provisions, if deemed appropriate.

6. Economic Reasonableness Evaluation

Section 25-8-503(8) of the revised (June 1985) Colorado Water Quality Control Act required the Division to "determine whether or not any or all of the water quality standard based effluent limitations are reasonably related to the economic, environmental, public health and energy impacts to the public and affected persons, and are in furtherance of the policies set forth in sections 25-8-192 and 25-8-104."

The Colorado Discharge Permit System Regulations, Regulation No. 62 (5 CCR 1002-62), further define this requirement and state: "Where economic, environmental, public health and energy impacts to the public and affected persons have been considered in the classifications and standards setting process, permits written to meet the standards may be presumed to have taken into consideration economic factors unless:

- a) A new permit is issued where the discharge was not in existence at the time of the classification and standards rulemaking, or
- b) In the case of a continuing discharge, additional information or factors have emerged that were not anticipated or considered at the time of the classification and standards rulemaking."

The evaluation for this permit shows that the Water Quality Control Commission, during their proceedings to adopt the Classification and Numeric Standards for the San Juan River and Dolores River Basins, considered economic reasonableness.

Furthermore, this is not a new discharger and no new information has been presented regarding the classifications and standards. Therefore, the water quality standard-based effluent limitations of this permit are determined to be reasonably related to the economic, environmental, public health and energy impacts to the public and affected persons and are in furtherance of the policies set forth in Sections 15-8-102 and 104.

B. Monitoring

1. Effluent Monitoring: Effluent monitoring will be required as shown in Table VI-2. Refer to the permit for locations of the monitoring point.

**Table VI-2 -Effluent Monitoring Requirements for Outfall 004**

<b>Effluent Parameter</b>	<b>Monitoring Frequency</b>	<b>Sample Type</b>
Flow, MGD	Weekly	Instantaneous
pH, s.u.	Weekly	In-Situ
Oil and Grease, mg/l	Weekly	Visual
Total Suspended Solids, mg/l	Weekly	Grab
Total Cadmium, mg/l	Weekly	Grab
Total Copper, mg/l	Weekly	Grab
Total Lead, mg/l	Weekly	Grab
Total Zinc, mg/l	Weekly	Grab
Total Dissolved Solids, mg/l	Quarterly	Grab

For every outfall with oil and grease monitoring, in the event an oil sheen or floating oil is observed, a grab sample shall be collected, analyzed, and reported on the appropriate DMR. In addition, corrective action shall be taken immediately to mitigate the discharge of oil and grease. A description of the corrective action taken should be included with the DMR.

C. Reporting

1. Discharge Monitoring Report: Sunnyside Gold Corporation must submit a Discharge Monitoring Report (DMR) on a monthly basis to the Division. This report should contain the required summarization of the test results for parameters shown in Table VI-2 and Part I.B.1 of the permit. See the permit, for details on such submission.
2. Special Reports: Special reports are required in the event of a spill, bypass, or other noncompliance. Please refer to Part II.A. of the permit for reporting requirements.

D. Additional Terms and Conditions

1. Signatory Requirements: Signatory requirements for reports and submittals are discussed in Part I, Section E.6. of the permit.
2. Materials Containment Plan: The permittee has previously submitted an engineered spill plan. An update to the plan is required to be filed within 90 days of the permit effective date, detailing all changes which have occurred since the original submittal. If no changes have occurred, a letter to this effect is required. For specific requirements, refer to Part I.D.1. of the permit.

E. Waste Minimization/Pollution Prevention

Waste minimization and pollution prevention are two terms that are becoming increasingly more common in industry today. Waste minimization includes reducing the amount of waste at the source through changes in industrial processes, and reuse and recycling of wastes for the original or some other purpose such as materials recovery or energy production. Pollution prevention goes hand-in-hand with waste minimization. If the waste is eliminated at the front of the line, it will not have to be treated at the end of the line. The direct benefits to the industry are often significant - both in terms of increased profit and in public relations. This program can affect all areas of process and waste control with which your industry deals. Elimination or reduction of a wastewater pollutant can also result in a reduction of an air pollutant or a reduction in the amount of hazardous materials that you have to handle and/or dispose of. This discharge permit does not specifically dictate waste minimization conditions at this time. We strongly encourage the permittee to develop a waste minimization plan. Several industries have already developed plans and found that implementation resulted in substantial savings. Both the Colorado Department of Public Health and the Environment and EPA have information and resources available to help you explore this topic.

F. Permit Termination

The permittee will be released from further permit responsibilities in accordance with conditions specified in the consent agreement.

Jon C. Kubic  
March 7, 2001

VII. REFERENCES

- A. Colorado Department of Public Health and Environment, Water Quality Control Commission. Regulation No. 31 The Basic Standards and Methodologies for Surface Water (5 CCR 1002-31). Denver: CDPHE, as revised 1/11/99 and effective 3/2/99.
- B. CO Dept. of Public Health and Environment, Water Quality Control Commission Regulation 38 Classifications and Numeric Standards for the San Juan and Dolores River Basins (5 CCR 1002-34). Denver: CDPHE, as revised 11/9/98.



- C. *Colorado Department of Public Health and Environment, Water Quality Control Commission. Regulation No. 62 Regulations for Effluent Limitations (5 CCR 1002-62). Denver: CDPHE, as revised 11/9/98 and effective 12/30/98.*
- D. *Colorado Department of Public Health and Environment, Water Quality Control Commission. Regulation No. 61 Colorado Discharge Permit System Regulations. (5 CCR 1002-61). Denver: CDPHE, as revised 3/9/99 and effective 4/30/99.*
- E. *Colorado Department of Public Health and Environment, Water Quality Control Commission. Regulation No. 39 Colorado River Salinity Standards (5 CCR 1002-39). Denver: CDPHE, as revised 7/14/97 and effective 8/30/97.*
- F. *U.S. Government, Office of the Federal Register, National Archives and Records Administration. Code of Federal Regulations (Part 440). Washington: 1998.*

#### VIII. PUBLIC NOTICE COMMENTS

Permit No.: CO-0027529

County: San Juan

**AUTHORIZATION TO DISCHARGE UNDER THE  
COLORADO DISCHARGE PERMIT SYSTEM**

In compliance with the provisions of the Colorado Water Quality Control Act, (25-8-101 et seq., CRS, 1973 as amended) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.; the "Act") the

**SUNNYSIDE GOLD CORPORATION**

is authorized to discharge from the American Tunnel treatment facility located in the T42N, R7W, NE1/4 S21, approx. 200 ft. south of the endpost of the west fork of Colorado Hwy 110 starting at Silverton, CO. to Cement Creek in accordance with effluent limitations, monitoring requirements and other conditions set forth in Part I and II hereof. All discharges authorized herein shall be consistent with the terms and conditions of this permit.

The applicant may demand an adjudicatory hearing within thirty days of the issuance of the final permit determination, per the Colorado Discharge Permit System Regulations, 61.7 (1). Should the applicant choose to contest any of the effluent limitations, monitoring requirements or other conditions contained herein, the applicant must comply with Section 24-4-104 CRS and the Colorado Discharge Permit System Regulations. Failure to contest any such effluent limitation, monitoring requirement, or other condition, constitutes consent to the condition by the Applicant.

This permit and the authorization to discharge shall expire at midnight, **May 31, 2006**.

Issued and Signed this      day of

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

J. David Holm, Director  
Water Quality Control Division

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## PART I

### A. DEFINITION OF EFFLUENT LIMITATIONS

#### 1. Effluent Limitations

Beginning no later than the effective date of this permit and lasting through **May 31, 2006**, the permittee is authorized to discharge from outfall 004A, the outfall from the fourth treatment pond to Cement Creek.

In accordance with the Water Quality Control Commission Regulations for Effluent Limitations and Colorado Discharge Permit System Regulations, Section 61.8(2), 5 C.C.R. 1002-61,, the permitted discharge shall not contain effluent parameter concentrations which exceed the following limitations specified below or exceed the specified flow limitation.

Effluent Parameter	Limitation	
	30-Day Avg.	Daily Max.
Flow, MGD (min-max)	Report	Report
pH, s.u. (min-max)	N/A	7.0 - 10.0
Oil and Grease, mg/l	N/A	10
Total Suspended Solids, mg/l	20	30
Total Cadmium, mg/l	0.05	0.10
Total Copper, mg/l	0.15	0.30
Total Lead, mg/l	0.30	0.60
Total Zinc, mg/l	0.75	1.5
Total Dissolved Solids, mg/l	Report	Report

### B. MONITORING REQUIREMENTS

#### 1. Frequency and Sample Type

In order to obtain an indication of the probable compliance or noncompliance with the effluent limitations specified in Part I.A.1, the permittee shall monitor all effluent parameters at the following frequencies. Such monitoring will begin immediately and last for the life of the permit unless otherwise noted. The results of such monitoring shall be reported on the Discharge Monitoring Report form (See Part I.E.).

Effluent Parameter	Monitoring Frequency	Sample Type
Flow, MGD	Weekly	Instantaneous
pH, s.u.	Weekly	In-Situ
Oil and Grease, mg/l	Weekly	Visual
Total Suspended Solids, mg/l	Weekly	Grab
Total Cadmium, mg/l	Weekly	Grab
Total Copper, mg/l	Weekly	Grab
Total Lead, mg/l	Weekly	Grab
Total Zinc, mg/l	Weekly	Grab
Total Dissolved Solids, mg/l	Quarterly	Grab

See Part I.C. for Definitions.

## B. MONITORING REQUIREMENTS

### 1. Frequency and Sample Type (continued)

Self-monitoring sampling by the permittee for compliance with the monitoring requirements specified above shall be performed at the following location: 004A, the outfall from the fourth treatment pond prior to entering Cement Creek.

If the permittee, using the approved analytical methods, monitors any parameter more frequently than required by this permit, then the results of such monitoring shall be included in the calculation and reporting of the values required in the Discharge Monitoring Report Form (DMRs) or other forms as required by the Division. Such increased frequency shall also be indicated.

#### Oil and Grease Monitoring

For every outfall with oil and grease monitoring, in the event an oil sheen or floating oil is observed, a grab sample shall be collected, analyzed, and reported on the appropriate DMR. In addition, corrective action shall be taken immediately to mitigate the discharge of oil and grease. A description of the corrective action taken should be included with the DMR.

## C. DEFINITIONS OF TERMS

1. "Daily Maximum limitation" means the limitation for this parameter shall be applied as an instantaneous maximum (or, for pH or DO, instantaneous minimum) value. The instantaneous value is defined as the analytical result of any individual sample. DMRs shall include the maximum (and/or minimum) of all instantaneous values within the calendar month. Any instantaneous value beyond the noted daily maximum limitation for the indicated parameter shall be considered a violation of this permit.
2. "Grab" sample, is a single "dip and take" sample so as to be representative of the parameter being monitored.
3. "In-situ" measurement is defined as a single reading, observation or measurement taken in the field at the point of discharge.
4. "Instantaneous" measurement is a single reading, observation, or measurement performed on site using existing monitoring facilities.
5. "Quarterly measurement frequency" means samples may be collected at any time during the calendar quarter if a continual discharge occurs. If the discharge is intermittent, then samples shall be collected during the period that discharge occurs.
6. "Seven (7) day average" means the arithmetic mean of all samples collected in a seven (7) consecutive day period. Such seven (7) day averages shall be calculated for all calendar weeks, which are defined as beginning on Sunday and ending on Saturday. If the calendar week overlaps two months (i.e. the Sunday is in one month and the Saturday in the following month), the seven (7) day average calculated for that calendar week shall be associated with the month that contains the Saturday. Samples may not be used for more than one (1) reporting period.
7. "Thirty (30) day average" means the arithmetic mean of all samples collected during a thirty (30) consecutive-day period. The permittee shall report the appropriate mean of all self-monitoring sample data collected during the calendar month on the Discharge Monitoring Reports. Samples shall not be used for more than one (1) reporting period.

## C. DEFINITIONS OF TERMS

8. "Total Metals" means the concentration of metals determined on an unfiltered sample following vigorous digestion (Section 4.1.3), or the sum of the concentrations of metals in both the dissolved and suspended fractions, as described in "Manual of Methods for Chemical Analysis of Water and Wastes," U.S. Environmental Protection Agency, March 1979, or its equivalent.
9. "Visual" observation is observing the discharge to check for the presence of a visible sheen or floating oil.
10. "Water Quality Control Division" or "Division" means the state Water Quality Control Division as established in 25-8-101 et al.)

Additional relevant definitions are found in the Colorado Water Quality Control Act, CRS " 25-8-101 et seq., the *Regulations for the State Discharge Permit System*, 5 CCR 1002-2, ' 6.1.0 et seq and other applicable regulations.

## D. SPECIAL REQUIREMENTS

### 1. Materials Containment Plan

Pursuant to Sections 61.8(3)(g) and (r) of the Colorado Discharge Permit System Regulations, the permittee is required to submit a Materials Containment Plan. Such a plan was previously submitted to the Division. An update of the plan shall be submitted to the Division within ninety days after the effective date of this permit and must be implemented. The update of the plan shall include changes in the information and procedures for the prevention and containment of spills of materials used, processed or stored at the facility which if spilled would have a reasonable probability of having a visible or otherwise detrimental impact on waters of the State <sup>1/2</sup>. The updated plan shall include, but not necessarily be limited to:

- (a) An updated history of the spills which have occurred in the three (3) years preceding the effective date of this permit. The history shall include a discussion on the cause of the spills and a the preventative measures designed to eliminate them from reoccurring;
- (b) An update of the reporting system which will be used to notify, at a minimum, responsible facility management, the Division, the Environmental Protection Agency, downstream water users within 5 miles downstream of the facility, and local health officials;
- (c) A description of any changes in the preventative facilities (including overall facility plot) which prevent, contain, or treat spills and unplanned discharges;
- (d) A current list which includes the volumes or quantities of all materials used, processed, or stored at the facility which represent a potential spill threat to surface waters. The location of stored material shall be indicated on the facility plot submitted for item c;
- (e) An implementation schedule for additional facilities which might be required in item c, but which are not yet operational;
- (f) A current list of available outside contractors, agencies, or other sources which could be utilized in the event of a spill in order to clean up its effects. If the facility is capable of handling spills in-house, this shall be documented in the plan;
- (g) Provision for yearly review and updating of the contingency plan, plus resubmission of the plan to the Division if conditions and/or procedures at the facility change the original plan.

#### D. SPECIAL REQUIREMENTS

##### 1. Materials Containment Plan (continued)

The foregoing provisions shall in no way render inapplicable those requirements imposed by the Federal Water Pollution Control Act, 33 U.S.C. § 1321, regulations promulgated thereunder, the Colorado Water Quality Control Act, and regulations promulgated thereunder. It is recommended that this plan be prepared by a professional engineer registered in the State of Colorado.

Nothing herein contained shall be construed as allowing any discharge to waters of the State other than through the discharge points specifically authorized in this permit. Nothing herein contained shall be construed as excusing any liability the permittee might have, civil or criminal, for any spill.

The submittal of a Spill Prevention Control and Countermeasure Plan (SPCC Plan) as required by 40 CFR Part 112 may satisfy all or part of this requirement. Should additional materials exist on site which are not addressed in the SPCC Plan, addressing those materials as per the above is required.

- 1/ If there is no such material present at the site, this shall be indicated in writing and submitted to the Division for review.
- 2/ If there is material present but the permittee feels there is not a reasonable probability of a spill impacting waters of the State, this shall be documented in writing and submitted to the Division for review. This documentation shall include; 1) distance to nearest surface waters, and; 2) a detailed description of any structure which prohibits the release of material onto the ground or into a conveyance system.

#### E. GENERAL MONITORING, SAMPLING AND REPORTING REQUIREMENTS

##### 1. Routine Reporting of Data

The DMR forms consist of four pages - the top "original" copy, and three attached no-carbon-required copies. After the DMR form has been filled out and signed, the four copies must be separated and distributed as follows: Reporting of the data gathered in compliance with Part I.B.1 shall be on a **monthly** basis. Reporting of all data gathered shall comply with the requirements of Part I.E. (General Requirements). Monitoring results shall be summarized for each month and reported on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1). The forms shall be mailed to the agencies listed below so they are received no later than the 28th day of the following month. If no discharge occurs during the reporting period, "No Discharge" shall be reported.

The DMR forms consist of four pages - the top "original" copy, and three attached no-carbon-required copies. After the DMR form has been filled out and signed, the four copies must be separated and distributed as follows:

The first original signed copy of each discharge monitoring report (DMR) shall be submitted to the Division at the following address:

Colorado Department of Public Health and Environment  
Water Quality Control Division  
WQCD-P-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

## E. GENERAL MONITORING, SAMPLING AND REPORTING REQUIREMENTS

### 1. Routine Reporting of Data (continued)

The first duplicate signed copy of each discharge monitoring report (DMR) shall be submitted to the following agency:

U.S. Environmental Protection Agency Region VIII  
Technical Enforcement Program (8ENF-T)  
Office of Enforcement, Compliance Assistance and Environmental Justice  
999 18th Street, Suite 300  
Denver, CO 80202-2466

The third and fourth copies are for the permittee records. The Discharge Monitoring Report forms shall be filled out accurately and completely in accordance with requirements of this permit and the instructions on the forms. They shall be signed by an authorized person as identified in Part I.E.6.

Calculations for all limitations which require the averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Division in the permit.

### 2. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and approval by the Division.

If the permittee monitors at the point of discharge any pollutant limited by the permit more frequently than required by the permit, using approved test procedures or as specified in the permit, the result of this monitoring shall be included in the calculation and reporting of data to the Division.

### 3. Analytical and Sampling Methods for Monitoring

The permittee shall install, calibrate, use and maintain monitoring methods and equipment, including biological and indicated pollutant monitoring methods. All sampling shall be performed by the permittee according to specified methods in 40 C.F.R. Part 136; methods approved by EPA pursuant to 40 C.F.R. Part 136; or methods approved by the Division, in the absence of a method specified in or approved pursuant to 40 C.F.R. part 136. **The analytical method selected for a parameter shall be the one that can measure the lowest detected limit for that parameter unless the permit limitation or stream standard for those parameters not limited, is within the testing range of another approved method.** When requested in writing, the Division may approve an alternative analytical procedure or any significant modification to an approved procedure.

When the most sensitive analytical method which complies with this part, has a detection limit greater than or equal to the permit limit, the permittee shall report "less than (the detectable limit)," as appropriate. Such reports shall not be considered as violations of the permit limit. The present lowest method detection limits for specific parameters (which have limitations which are, in some cases, less than or equal to the detection limit) are as follows:

Cadmium	0.0003 mg/l
Copper	0.005 mg/l
Lead	0.005 mg/l
Zinc	0.05 mg/l

These limits apply to the total recoverable, dissolved, or the potentially dissolved fraction of metals.



## **E. GENERAL MONITORING, SAMPLING AND REPORTING REQUIREMENTS**

### **4. Records**

The permittee shall establish and maintain records. Those records shall include the following:

- (a) The date, type, exact location, and time of sampling or measurements;
- (b) The individual(s) who performed the sampling or measurements;
- (c) The date(s) the analyses were performed;
- (d) The individual(s) who performed the analyses;
- (e) The analytical techniques or methods used;
- (f) The results of such analyses; and
- (g) Any other observations which may result in an impact on the quality or quantity of the discharge as indicated in 40 CFR 122.44 (i)(1)(iii).

The permittee shall retain for a minimum of three (3) years records of all monitoring information, including all original strip chart recordings for continuous monitoring instrumentation, all calibration and maintenance records, copies of all reports required by this permit and records of all data used to complete the application for this permit. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Division or EPA.

### **5. Flow Measuring Device**

If not already a part of the permitted facility, within ninety (90) days after the effective date of the permit, a flow measuring device shall be installed to give representative values of effluent quantities at the respective discharge points. Unless specifically exempted, or modified in Part I.E.5 of this permit, a flow measuring device will be applicable at all designated discharge points.

At the request of the Division, the permittee shall show proof of the accuracy of any flow-measuring device used in obtaining data submitted in the monitoring report. The flow-measuring device must indicate values within ten percent of the actual flow being discharged from the facility.

### **6. Signatory and Certification Requirements**

- (a) All reports and other information required by the Division, shall be signed and certified for accuracy by the permittee in accord with the following criteria:
  - (i) In the case of corporations, by a principal executive officer of at least the level of vice-president or his or her duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the form originates;
  - (ii) In the case of a partnership, by a general partner;
  - (iii) In the case of a sole proprietorship, by the proprietor;
  - (iv) In the case of a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.
- (b) All reports required by permits, and other information requested by the Division shall be signed by a person as described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

**E. GENERAL MONITORING, SAMPLING AND REPORTING REQUIREMENTS -**

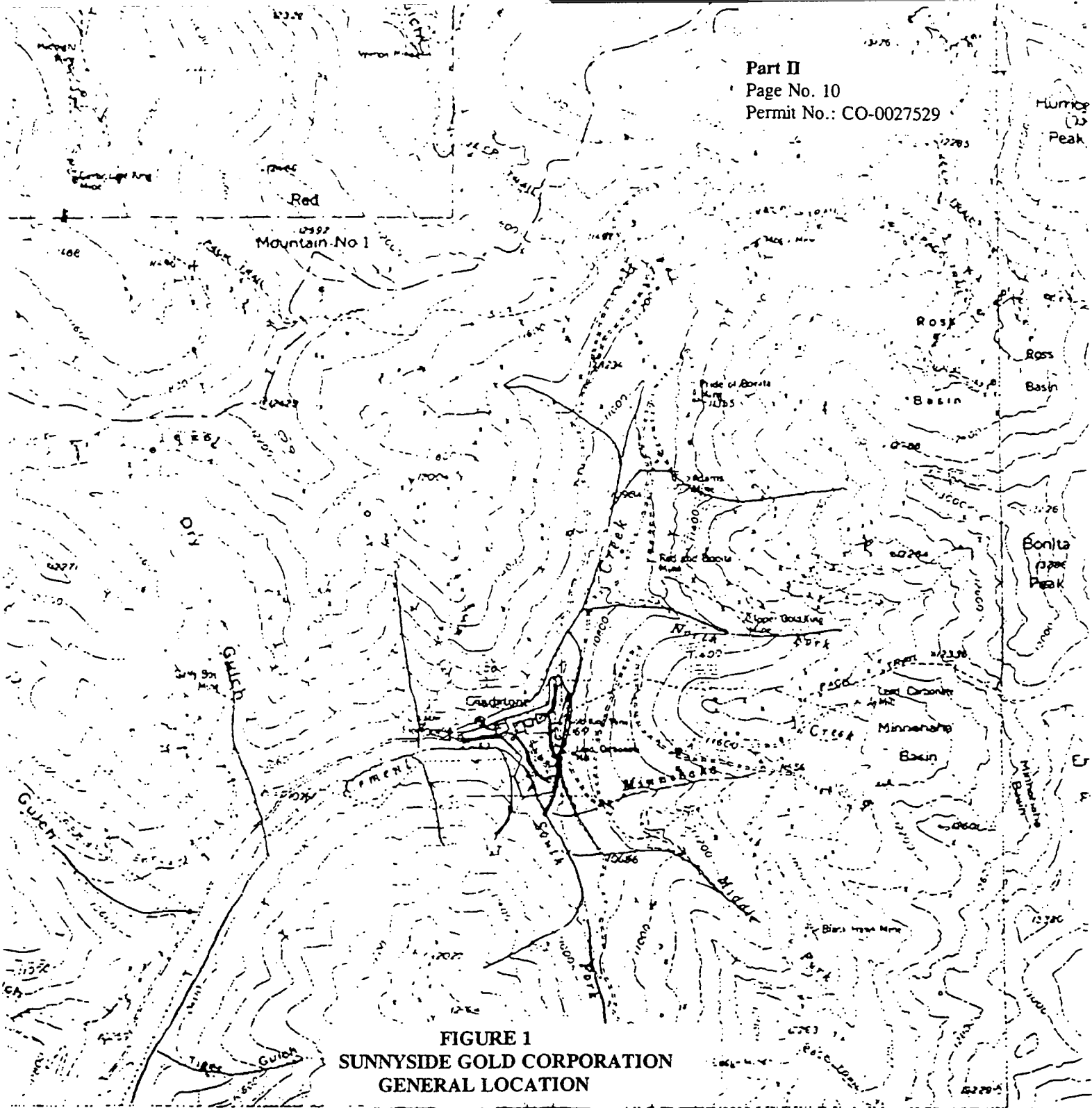
**6. Signatory and Certification Requirements (continued)**

- (i) The authorization is made in writing by a person described above;
- (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and,
- (iii) The written authorization is submitted to the Division.

If an authorization as described in this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this section must be submitted to the Division prior to or together with any reports, information, or applications to be signed by an authorized representative.

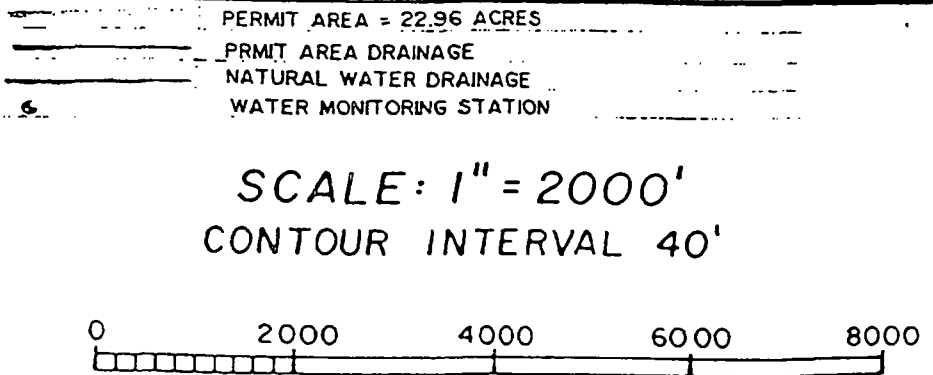
The permittee, or the duly authorized representative shall make and sign the following certification on all such documents:

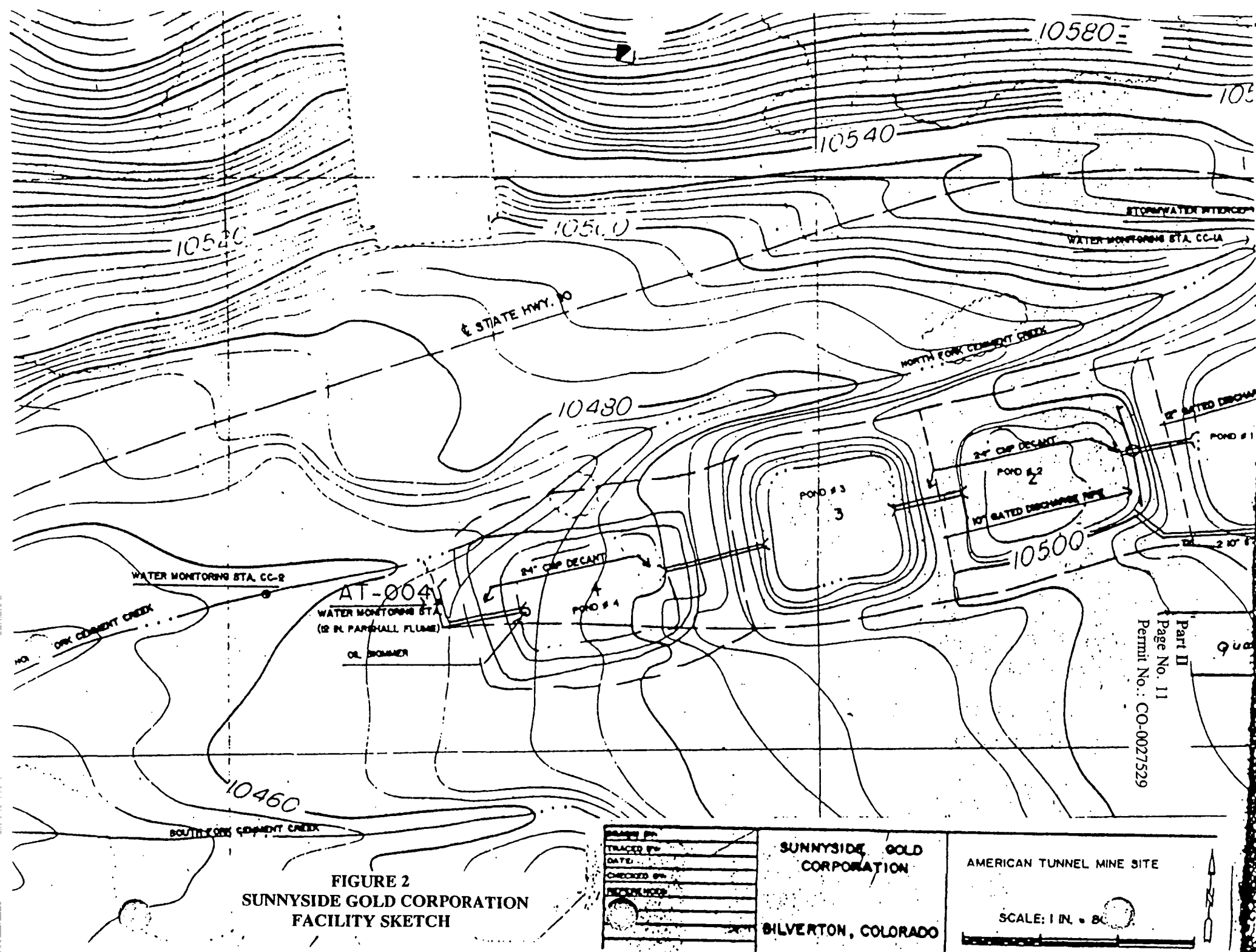
"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."



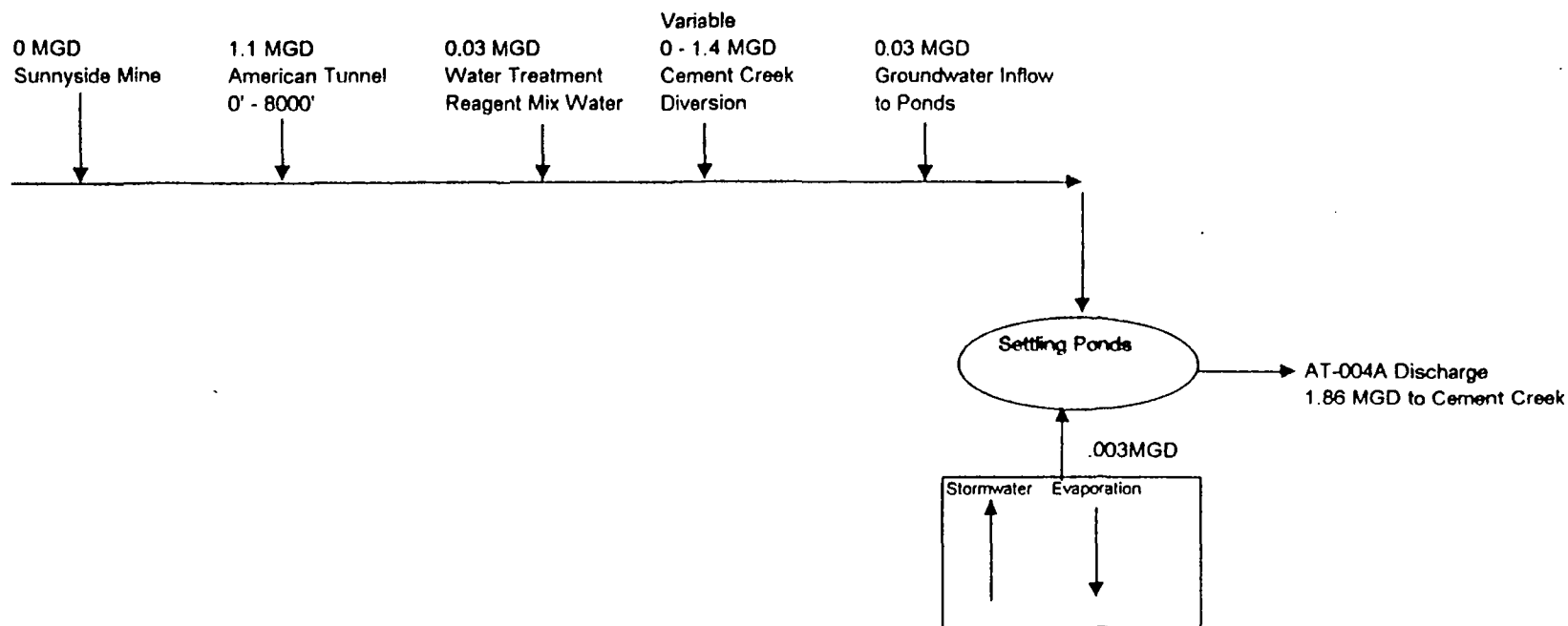
**FIGURE 1**  
**SUNNYSIDE GOLD CORPORATION**  
**GENERAL LOCATION**

**SUNNYSIDE GOLD**  
**CORPORATION**  
**AN JUAN COUNTY**  
**SILVERTON, COLORADO**  
U.S.G.S. QUAD. IRONTON PARK





Item 11. American Tunnel Treatment flow line drawing



**FIGURE 3**  
**SUNNYSIDE GOLD CORPORATION**  
**FLOW LINE DRAWING**

## A. NOTIFICATION REQUIREMENTS

### 1. Notification to Parties

All notification requirements under this section shall be directed as follows:

- a. Oral Notifications, other than for spills, during normal business hours shall be to:

Water Quality Protection Section  
Water Quality Control Division  
Telephone No.: (303) 692-3500

Spills notifications at any time and other notifications after hours shall be to :

Emergency Response Unit  
Office of the Environment  
Telephone No.: (303) 756-4455

- b. Written notification shall be to:

Water Quality Protection Section  
Water Quality Control Division  
Colorado Department of Public Health and Environment  
WQCD-WQP-B2  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

### 2. Change in Discharge

The permittee shall notify the Division, in writing, of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The alteration or addition could significantly change the nature or increase the quantity or pollutants discharged; or
- b. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported pursuant to an approved land application plan.

The permittee shall give advance notice to the Division of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

Whenever notification of any planned physical alterations or additions to the permitted facility is required pursuant to this section,, the permittee shall furnish the Division such plans and specifications which the Division deems reasonably necessary to evaluate the effect on the discharge, the stream, or ground water. If the Division finds that such new or altered discharge might be inconsistent with the conditions of the permit, the Division shall require a new or revised permit application and shall follow the procedures specified in Sections 61.5 through 61.6, and 61.15 of the Colorado Discharge Permit System Regulations.

### 3. Special Notifications - Definitions

- a. **Bypass:** The intentional diversion of waste streams from any portion of a treatment facility.
- b. **Severe Property Damage:** Substantial physical damage to property at the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. It does not mean economic loss caused by delays in production.
- c. **Spill:** An incident in which flows or solid materials are accidentally or unintentionally allowed to flow or escape so as to be lost from the treatment, processing or manufacturing system which may cause or threaten pollution of state waters.
- d. **Upset:** An exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

**A. NOTIFICATION REQUIREMENTS**

**4. Noncompliance Notification**

- a. If, for any reason, the permittee does not comply with or will be unable to comply with any discharge limitations or standards specified in this permit, the permittee shall, at a minimum, provide the Division and EPA with the following information:
  - i. A description of the discharge and cause of noncompliance;
  - ii. The period of noncompliance, including exact dates and times and/or the anticipated time when the discharge will return to compliance; and
  - iii. Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.
- b. The permittee shall report the following circumstances orally within twenty-four hours from the time the permittee becomes aware of the circumstances, and shall mail to the Division a written report containing the information requested in Part II.A.4 (a) within five days after becoming aware of the following circumstances:
  - i. Circumstances leading to any noncompliance which may endanger health or the environment regardless of the cause of the incident;
  - ii. Circumstances leading to any unanticipated bypass which exceeds any effluent limitations in the permit;
  - iii. Circumstances leading to any upset or spill which causes an exceedance of any effluent limitation in the permit;
  - iv. Daily maximum violations for any of the pollutants limited by PART I.A of this permit and specified as requiring 24 hour notification. This includes any toxic pollutant or hazardous substance or any pollutant specifically identified as the method to control any toxic pollutant or hazardous substance.
- c. The permittee shall report instances of non-compliance which are not required to be reported within 24-hours at the time Discharge Monitoring Reports are submitted. The reports shall contain the information listed in sub-paragraph (a) of this section.

**5. Other Notification Requirements**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule in the permit shall be submitted no later than fourteen (14) days following each scheduled date, unless otherwise provided by the Division.

The permittee shall notify the Division, in writing, thirty days in advance of a proposed transfer of permit as provided in Part II.B.4.

The permittee's notification of all anticipated noncompliance does not stay any permit condition.

All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Division as soon as they know or have reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - i. One hundred micrograms per liter (100 ug/l);
  - ii. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
  - iii. Five times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 61.4(2)(g).
  - iv. The level established by the Division in accordance with 40 C.F.R. § 122.44(f).
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
  - i. Five hundred micrograms per liter (500 ug/l);
  - ii. One milligram per liter (1 mg/l) for antimony; and

**A. NOTIFICATION REQUIREMENTS**

**5. Other Notification Requirements (continued)**

- iii. Ten times the maximum concentration value reported for that pollutant in the permit application..
- iv. The level established by the Division in accordance with 40 C.F.R. § 122.44(f).

**6. Bypass Notification**

If the permittee knows in advance of the need for a bypass, a notice shall be submitted, at least ten days before the date of the bypass, to the Division. The bypass shall be subject to Division approval and limitations imposed by the Division. Violations of requirements imposed by the Division will constitute a violation of this permit.

**7. Upsets**

**a. Effect of an Upset.**

An upset constitutes an affirmative defense to an action brought for noncompliance with permit effluent limitations if the requirements of paragraph (b) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

**b. Conditions Necessary for a Demonstration of Upset**

A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed contemporaneous operating logs, or other relevant evidence that:

- i. An upset occurred and that the permittee can identify the specific cause(s) of the upset; and
- ii. The permitted facility was at the time being properly operated and maintained; and
- iii. The permittee submitted proper notice of the upset as required in Part II.A.3. of this permit (24-hour notice); and
- iv. The permittee complied with any remedial measure necessary to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reason able likelihood of adversely affecting human health or the environment.

In addition to the demonstration required above, a permittee who wishes to establish the affirmative defense of upset for a violation of effluent limitations based upon water quality standards shall also demonstrate through monitoring, modeling or other methods that the relevant standards were achieved in the receiving water.

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- i. An upset occurred and that the permittee can identify the specific cause(s) of the upset; and
- ii. The permitted facility was at the time being properly operated and maintained; and
- iii. The permittee submitted proper notice of the upset as required in Part II.A.4. of this permit (24-hour notice); and
- iv. The permittee complied with any remedial measure necessary to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reason able likelihood of adversely affecting human health or the environment.

In addition to the demonstration required above, a permittee who wishes to establish the affirmative defense of upset for a violation of effluent limitations based upon water quality standards shall also demonstrate through monitoring, modeling or other methods that the relevant standards were achieved in the receiving water.

**c. Burden of Proof**

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

**8. Discharge Point**

Any discharge to the waters of the State from a point source other than specifically authorized by this permit is prohibited.



## A. NOTIFICATION REQUIREMENTS

### 9. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee as necessary to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when necessary to achieve compliance with the conditions of the permit.

### 10. Minimization of Adverse Impact

The permittee shall take all reasonable steps to minimize or prevent any discharge of sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. As necessary, accelerated or additional monitoring to determine the nature and impact of the noncomplying discharge is required.

### 11. Removed Substances

Solids, sludges, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed in accordance with applicable state and federal regulations.

For all domestic wastewater treatment works, at industrial facilities, the permittee shall dispose of sludge in accordance with all State and Federal regulations.

### 12. Submission of Incorrect or Incomplete Information

Where the permittee failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or report to the Division, the permittee shall promptly submit the relevant information which was not submitted or any additional information needed to correct any erroneous information previously submitted

### 13. Bypass

- a. Bypasses are prohibited and the Division may take enforcement action against the permittee for bypass, unless:
  - i. The bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;
  - ii. There were no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - iii. Proper notices were submitted in compliance with Part II.A.4.
- b. "Severe property damage" as used in this Subsection means substantial physical damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- c. The permittee may allow a bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance or to assure optimal operation. These bypasses are not subject to the provisions of paragraph a. above.
- d. The Division may approve an anticipated bypass, after considering adverse effects, if the Division determines that the bypass will meet the conditions specified in paragraph a. above.

### 14. Reduction, Loss, or Failure of Treatment Facility

The permittee has the duty to halt or reduce any activity if necessary to maintain compliance with the effluent limitations of the permit. Upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production, control sources of wastewater, or all discharges, until the facility is restored or an alternative method of treatment is provided. This provision also applies to power failures, unless an alternative power source sufficient to operate the wastewater control facilities is provided.

It shall not be a defense for a permittee in an enforcement action that it would be necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

## **B. RESPONSIBILITIES**

### **1. Inspections and Right to Entry**

The permittee shall allow the Division and/or the authorized representative, upon the presentation of credentials:

- a. To enter upon the permittee's premises where a regulated facility or activity is located or in which any records are required to be kept under the terms and conditions of this permit;
- b. At reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit and to inspect any monitoring equipment or monitoring method required in the permit; and
- c. To enter upon the permittee's premises in a reasonable manner and at a reasonable time to inspect and/or investigate, any actual, suspected, or potential source of water pollution, or to ascertain compliance or non compliance with the Colorado Water Quality Control Act or any other applicable state or federal statute or regulation or any order promulgated by the Division. The investigation may include, but is not limited to, the following: sampling of any discharge and/or process waters, the taking of photographs, interviewing of any person having knowledge related to the discharge permit or alleged violation, access to any and all facilities or areas within the permittee's premises that may have any affect on the discharge, permit, or alleged violation. Such entry is also authorized for the purpose of inspecting and copying records required to be kept concerning any effluent source.
- d. The permittee shall provide access to the Division to sample the discharge at a point after the final treatment process but prior to the discharge mixing with state waters upon presentation of proper credentials.

In the making of such inspections, investigations, and determinations, the Division, insofar as practicable, may designate as its authorized representatives any qualified personnel of the Department of Agriculture. The Division may also request assistance from any other state or local agency or institution.

### **2. Duty to Provide Information**

The permittee shall furnish to the Division, within a reasonable time, any information which the Division may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Division, upon request, copies of records required to be kept by this permit.

### **3. Transfer of Ownership or Control**

- a. Except as provided in paragraph b. of this section, a permit may be transferred by a permittee only if the permit has been modified or revoked and reissued as provided in Section 61.8(8) of the Colorado Discharge Permit System Regulations, to identify the new permittee and to incorporate such other requirements as may be necessary under the Federal Act.
- b. A permit may be automatically transferred to a new permittee if:
  - i. The current permittee notifies the Division in writing 30 days in advance of the proposed transfer date; and
  - ii. The notice includes a written agreement between the existing and new permittee(s) containing a specific date for transfer of permit responsibility, coverage and liability between them; and
  - iii. The Division does not notify the existing permittee and the proposed new permittee of its intent to modify, or revoke and reissue the permit.
  - iv. Fee requirements of the Colorado Discharge Permit System Regulations, Section 61.15 have been met.

### **4. Availability of Reports**

Except for data determined to be confidential under Section 308 of the Federal Clean Water Act and Colorado Discharge Permit System Regulations 5 CCR 1002-61, Section 61.5.(4), all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Division and the Environmental Protection Agency.

The name and address of the permit applicant(s) and permittee(s), permit applications, permits and effluent data shall not be considered confidential. Knowingly making false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the Federal Clean Water Act, and Section 25-8-610 C.R.S.

### **5. Modification, Suspension, Revocation, or Termination of Permits By the Division**

The filing of a request by the permittee for a permit modification, revocation and reissuance/termination or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

- a. A permit may be modified, suspended, or terminated in whole or in part during its term for reasons determined by the Division including, but not limited to, the following:

**B. RESPONSIBILITIES**

**5. Modification, Suspension, Revocation, or Termination of Permits By the Division**

- i. Violation of any terms or conditions of the permit;
  - ii. Obtaining a permit by misrepresentation or failing to disclose any fact which is material to the granting or denial of a permit or to the establishment of terms or conditions of the permit; or
  - iii. Materially false or inaccurate statements or information in the permit application or the permit.
  - iv. A determination that the permitted activity endangers human health or the classified or existing uses of state waters and can only be regulated to acceptable levels by permit modifications or termination.
- b. A permit may be modified in whole or in part for the following causes, provided that such modification complies with the provisions of Section 61.10 of the Colorado Discharge Permit System Regulations:
- i. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
  - ii. The Division has received new information which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of different permit conditions at the time of issuance. For permits issued to new sources or new dischargers, this cause includes information derived from effluent testing required under Section 61.4(7)(e) of the Colorado Discharge Permit System Regulations. This provision allows a modification of the permit to include conditions that are less stringent than the existing permit only to the extent allowed under Section 61.10 of the Colorado Discharge Permit System Regulations.
  - iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:
    - (A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved water quality standard, or an effluent limitation set forth in 5 CCR 1002-62, § 62 et seq.; and
    - (B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a Commission action with respect to the water quality standard or effluent limitation on which the permit condition was based; and
    - (C) The permittee requests modification after the notice of final action by which the EPA effluent limitation guideline, water quality standard, or effluent limitation is revised, withdrawn, or modified; or
    - (D) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this Regulation, within ninety (90) days of judicial remand.
  - iv. The Division determines that good cause exists to modify a permit condition because of events over which the permittee has no control and for which there is no reasonable available remedy.
  - v. The permittee has received a variance.
  - vi. When required to incorporate applicable toxic effluent limitation or standards adopted pursuant to § 307(a) of the Federal act.
  - vii. When required by the reopener conditions in the permit.
  - viii. As necessary under 40 C.F.R. 403.8(e), to include a compliance schedule for the development of a pretreatment program.
  - ix. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under Section 61.8(2) of the Colorado Discharge Permit System Regulations.
  - x. To establish a pollutant notification level required in Section 61.8(5) of the Colorado Discharge Permit System Regulations.

**B. RESPONSIBILITIES**

**5. Modification, Suspension, Revocation, or Termination of Permits By the Division (Cont.)**

- xii. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions, to the extent allowed in Section 61.10 of the Colorado Discharge Permit System Regulations.
  - xiii. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.
  - xiii. For any other cause provided in Section 61.10 of the Colorado Discharge Permit System Regulations.
- c. At the request of a permittee, the Division may modify or terminate a permit and issue a new permit if the following conditions are met:
  - i. The Regional Administrator has been notified of the proposed modification or termination and does not object in writing within thirty days of receipt of notification,
  - ii. The Division finds that the permittee has shown reasonable grounds consistent with the Federal and State statutes and regulations for such modifications or termination;
  - iii. Requirements of Section 61.15 of the Colorado Discharge Permit System Regulations have been met, and
  - iv. Requirements of public notice have been met.
- d. Permit modification (except for minor modifications), termination or revocation and reissuance actions shall be subject to the requirements of Sections 61.5(2), 61.5(3), 61.6, 61.7 and 61.15 of the Colorado Discharge Permit System Regulations. The Division shall act on a permit modification request, other than minor modifications requests, within 180 days of receipt thereof. Except for minor modifications, the terms of the existing permit govern and are enforceable until the newly issued permit is formally modified or revoked and reissued following public notice.
- e. Upon consent by the permittee, the Division may make minor permit modifications without following the requirements of Sections 61.5(2), 61.5(3), 61.7 and 61.15 of the Colorado Discharge Permit System Regulations. Minor modifications to permits are limited to:
  - i. Correcting typographical errors; or
  - ii. Increasing the frequency of monitoring or reporting by the permittee; or
  - iii. Changing an interim date in a schedule of compliance, provided the new date of compliance is not more than 120 days after the date specific in the existing permit and does not interfere with attainment of the final compliance date requirement; or
  - iv. Allowing for a transfer in ownership or operational control of a facility where the Division determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittees has been submitted to the Division; or
  - v. Changing the construction schedule for a discharger which is a new source, but no such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge; or
  - vi. Deleting a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.
- f. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.
- g. The filing of a request by the permittee for a permit modification, revocation and reissuance or termination does not stay any permit condition.
- h. All permit modifications and reissuances are subject to the antibacksliding provisions set forth in 61.10 (e) through (g).

**6. Oil and Hazardous Substance Liability**

- Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under Section 311 (Oil and Hazardous Substance Liability) of the Clean Water Act.

**B. RESPONSIBILITIES**

**7. State Laws**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority granted by Section 510 of the Clean Water Act.

**8. Permit Violations**

Failure to comply with any terms and/or conditions of this permit shall be a violation of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit.

**9. Property Rights**

The issuance of this permit does not convey any property or water rights in either real or personal property, or stream flows, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

**10. Severability**

The provisions of this permit are severable. If any provisions of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances and the application of the remainder of this permit shall not be affected.

**11. Renewal Application**

If the permittee desires to continue to discharge, a permit renewal application shall be submitted at least one hundred eighty (180) days before this permit expires. If the permittee anticipates there will be no discharge after the expiration date of this permit, the Division should be promptly notified so that it can terminate the permit in accordance with Part II.B.5.

**12. Confidentiality**

Any information relating to any secret process, method of manufacture or production, or sales or marketing data which has been declared confidential by the permittee, and which may be acquired, ascertained, or discovered, whether in any sampling investigation, emergency investigation, or otherwise, shall not be publicly disclosed by any member, officer, or employee of the Commission or the Division, but shall be kept confidential. Any person seeking to invoke the protection of this Subsection (12) shall bear the burden of proving its applicability. This section shall never be interpreted as preventing full disclosure of effluent data.

**13. Fees**

The permittee is required to submit payment of an annual fee as set forth in the 1983 amendments to the Water Quality Control Act, Section 25-8-502 (1) (b), and the Colorado Discharge Permit System Regulations 5 CCR 1002-61, Section 61.15 as amended. Failure to submit the required fee when due and payable is a violation of the permit and will result in enforcement action pursuant to Section 25-8-601 et. seq., C.R.S. 1973 as amended.

**14. Duration of Permit**

The duration of a permit shall be for a fixed term and shall not exceed five years. Filing of a timely and complete application shall cause the expired permit to continue in force to the effective date of the new permit. The permit's duration may be extended only through administrative extensions and not through interim modifications.

**15. Section 307 Toxics**

If a toxic effluent standard or prohibition, including any applicable schedule of compliance specified, is established by regulation pursuant to Section 307 of the Federal Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the discharge permit, the Division shall institute proceedings to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

**16. Antibacksliding**

- a. A permit may not be renewed, reissued, or modified to contain effluent limitations adopted pursuant to Section 25-8-503(1)(b) (BPJ) of the Water Quality Control Act, which are less stringent than the comparable effluent limitations or standards in the previous permit, unless any one of the following exceptions is met and the conditions of paragraph (c) of this section are met:

**B. RESPONSIBILITIES**

- i. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of less stringent effluent limitations; or
  - ii. Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation or standard at the time of permit issuance; or
  - iii. The Division determines that technical mistakes or mistaken interpretations of law were made in issuing the permit, which justified relaxation of the effluent limitations or standards; or
  - iv. A less stringent effluent limitation or standard is necessary because of events over which the permittee has no control and for which there is not reasonable available remedy; or
  - v. The permittee has received a permit variance; or
  - vi. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case, the limitations in the renewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).
- b. A permit may not be renewed, reissued, or modified to contain effluent limitations adopted pursuant to 61.8(2)(b) or (c) of the Colorado Discharge Permit System Regulations that are less stringent than the comparable effluent limitations in the previous permit, unless any of the exceptions provided herein is met and the conditions of paragraph c. of this section are met.
- i. In waters where the applicable water quality standard has not yet been attained, effluent limitations based on a total maximum daily load or other waste load allocation may be revised to be less stringent if the cumulative effect of all such revisions assures attainment of such water quality standard, or the designated use which is not being attained is removed in accordance with Section 31.6 of the Basic Standards.
  - ii. In waters where the applicable water quality standard has been attained, effluent limitations based on a total maximum daily load, other waste load allocation, or any other permitting standard (including any water quality standard) may be revised to be less stringent if such revision is subject to and consistent with the antidegradation provisions of Section 31.8 of the Basic Standards. Consistency with Section 31.8 shall be presumed if the waters in question have been designated by the Commission as "use protected"; or
  - iii. Whether or not the applicable water quality standard has been attained:
    - (A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justified the application of less stringent effluent limitations; or
    - (B) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is not reasonable available remedy; or
    - (C) The permittee has received a permit variance; or
    - (D) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case, the limitations in the renewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).
- c. In no event may a permit with respect to which paragraphs a. and b. of this section apply be renewed, reissued, or modified to contain an effluent limitation or standard which is less stringent than required by federal effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into state waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of an applicable water quality standard.

**17. Effect of Permit Issuance**

- a. The issuance of a permit does not convey any property rights or any exclusive privilege.
- b. The issuance of a permit does not authorize any injury to person or property or any invasion of personal rights, nor does it authorize the infringement of federal, state, or local laws or regulations.
- c. Except for any toxic effluent standard or prohibition imposed under Section 307 of the Federal act or any standard for sewage sludge use or disposal under Section 405(d) of the Federal act, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 318, 403, and 405(a) and (b) of the Federal act. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Section 61.8(8) of the Colorado Discharge Permit System Regulations.
- d. Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage sludge use or disposal.